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VOLUME IV

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 161

ARTHUR CULOMBE, PETITIONER

vs.

CONNECTICUT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

PETITION FOR CERTIORARI FILED MAY 12, 1960

CERTIORARI GRANTED JUNE 20, 1960

STATE OF CONNECTICUT

Supreme Court of Errors

HARTFORD COUNTY.

OCTOBER TERM, 1958.

4717

STATE OF CONNECTICUT

vs.

ARTHUR CULOMBE, ALIAS ARTHUR COLOMBE.

DEFENDANT'S APPEAL FROM SUPERIOR COURT.

HON. JAMES C. SHANNON, JUDGE.

For Plaintiff:

ALBERT S. BILL,
State's Attorney.

DOUGLAS B. WRIGHT AND
JOHN D. LABELLE,
Assistant State's Attorneys.

For Defendant:

ALEXANDER A. GOLDFARB,
Special Public Defender.

TABLE OF CONTENTS

	PAGE
Motion for bench warrant	1
Bench warrant	1
Indictment	2
Motion for change of venue	2
Memorandum of decision on defendant's motion for change of venue (Bordon, J.)	3
Judgment	7
Motion to set aside verdict	9
Defendant's appeal	10
Defendant's request for finding	11
Finding (Shannon, J.)	15
Finding (Bordon, J.)	39
Amendment to finding (Shannon, J.)	40
Assignment of errors	48
Proceedings in the Supreme Court of Errors of the State of Connecticut	55
Opinion, Baldwin, Ch. J	57
Judgment	72
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	73

To the Honorable Superior Court for the County of Hartford, now in session:

ALBERT S. BILL, State's Attorney within and for said County, here in Court accuses Arthur Colombe, of Hartford, Connecticut, of MURDER IN THE FIRST DEGREE, and charges that at the City of New Britain, on or about the 15th day of December, 1956, the said Arthur Colombe murdered Edward J. Kurpiewski and Daniel J. Janowski, thereby committing the crime of murder in the first degree, in violation of Section 8350 of the General Statutes, Revision of 1949;

And the said Arthur Colombe stands informed against by said Attorney for said crime and is presently in the Hartford County Jail:

WHEREFORE, the said Attorney prays that a bench warrant may issue against the said Arthur Colombe, and that he may be arrested and brought before the Superior Court to answer to said information and be dealt with according to law.

ALBERT S. BILL,
State's Attorney.

To the Sheriff of the County of Hartford, His Deputy, or to any State Policeman of the State of Connecticut, or to any proper officer, GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to arrest the body of the within-named Arthur Colombe and him forthwith have before the Superior Court to answer to the foregoing information, and be thereon dealt with according to law.

Fail not but due service and return make.

Dated at Hartford, Connecticut, this 6th day of March, 1957.

By the Court.

WILLIAM F. FERGUSON,
Assistant Clerk.

To the Honorable Superior Court, holden at Hartford, within and for the County of Hartford, State of Connecticut, on the first Tuesday of March, A. D. 1957, and now in session:

FIRST COUNT.

The Grand Jurors within and for said County accuse Arthur Culombe, alias Arthur Colombe, of Hartford, Connecticut, of the crime of MURDER IN THE FIRST DEGREE and charge that at the City of New Britain, in said County of Hartford, on the 15th day of December, 1956, the said Arthur Culombe, alias Arthur Colombe, murdered one Edward J. Kurpiewski, and that said murder was committed in perpetrating a robbery.

SECOND COUNT.

And the said Grand Jurors further accuse the said Arthur Culombe, alias Arthur Colombe, of Hartford, Connecticut, of the crime of MURDER IN THE FIRST DEGREE and charge that at the City of New Britain, in said County of Hartford, on the 15th day of December, 1956, the said Arthur Culombe, alias Arthur Colombe, murdered one Daniel J. Janowski, and that said murder was committed in perpetrating a robbery.

Hartford, Conn.,
March 14, 1957.

A true bill.

VINCENT W. DENNIS,
Foreman of Grand Jury.

MOTION FOR CHANGE OF VENUE.

The defendant, Arthur Columbe, under the right given him by Section 8794 of the General Statutes of Connecticut, Revision of 1949, does hereby make this motion for a change of venue, and as reasons therefor sets forth the following:

1. That by reason of matters and incidents connected with this case and collateral to it, and other matters of a similar nature to that charged in this case, this case has received an enormous amount of notoriety and publicity in newspapers printed in the County, on radio commentary programs, and in television program newscasting:

2. That the newspapers, radio commentators and television newscasters, as aforesaid, have consistently and constantly for many weeks past continually referred to the defendant and the party charged with him as the "self-confessed mad killers";

3. That the newspapers printed in this County, the radio commentaries and the television newscasting statements, both by way of news items and editorials, have set forth statements detailing the confessions of the accused and the party charged with him, and have set forth the alleged confessions of multiple murders;

4. That by reason of the characterizations in newspapers, radio comments and television newscasts describing the said defendant and the party charged with him as "mad killers" and "confessed mad killers" the people of the County have become inflamed against the said defendant and over-wrought in their feelings in this matter, and, as a result thereof, it would be virtually impossible to obtain a jury of citizens of this County who have not already read, heard or seen stories of the confessions and the characterizations of the defendant and the party charged with him, and which could have a clear, unbiased and unprejudiced mind.

WHEREFORE the defendant, Arthur Culombe, respectfully moves the Court to change the venue of this case from Hartford County to Fairfield County in order that he may obtain, as given to him by his constitutional rights, a fair and impartial trial.

Defendant ARTHUR COLUMBE,

By THOMAS F. MCDONOUGH,
His Attorney.

Filed March 15, 1957.
Denied April 1, 1957—BORDON, *J.*

MEMORANDUM OF DECISION ON
DEFENDANTS' MOTION FOR CHANGE OF VENUE.

The defendants' motions for a change of venue are supported by evidence contemplated to show a liability to prejudice in Hartford County due to unusual publicity given the cases in the newspapers, on the radio and through television. There was, however, no evidence before the Court indicating prejudicial re-

sults from such publicity. Many witnesses testified to aroused public opinion, but no credible evidence was presented that such opinion had crystalized into unwavering conclusions precluding a fair trial. Nor was there any evidence of expressed or vigorous public sentiment that such a trial could not be had in Hartford County. Few of the witnesses could be regarded as competent to interpret public opinion accurately, and most of them testified that mass discussions among citizens of the country indicated opinions that a fair trial could be had within the county.

Prior to the apprehension of the defendants there had been a number of atrocious holdup killings which created fear and panic among many businessmen, particularly gas station operators, package store owners, and operators of small shops in outlying places. The newspapers exploited their journalistic license by dramatizing their stories, by calling the defendants "mad killers", and by showing pictures of the defendants and of places wherein alleged killings occurred. Undoubtedly such publicity had an impact on general public opinion and probably created indelible marks on many people who, prior to the apprehension of the defendants, regarded themselves as probable victims. But, despite the efficient publicity, it is doubtful that there are many people in the county who would be unwilling to accord the defendants a fair trial. So strongly is the American system of justice embedded in the minds of our citizens that outraged feelings usually give way to a desire for orderly procedure.

The right of the defendants to a change of venue is created by Section 8794, General Statutes, Revision 1949. This statute provides that a judge holding any term of the Superior Court *may*, upon motion, order any criminal case pending in such court to be transferred to the Superior Court in any other county. The defendants do not have an inherent right to a change of venue. The constitutional and statutory guarantees with which an accused is clothed do not include the right to a change of venue. The statute authorizing it leaves it to the discretion of the presiding judge without providing any reasons or causes which could control the exercise of such discretion, and does not attempt to state the grounds upon which the Court may make the order. The purpose of the statute is, obviously, to confer power on the presiding judge in the event he deems it necessary

to further safeguard the rights of an accused. The burden of proof is, therefore, on the defendants to establish the reasons and need for a change as contained in their motions. *State v. Cianflone*, 98 Conn. 454, 461. The statute clearly denotes that such a motion is addressed to the sound discretion of the Court, and is not one of the fundamental rights accorded an accused charged with crime. *State v. Luria*, 100 Conn. 207, 209.

Perhaps the leading case in this State on the subject is that of *State v. Chapman*, 103 Conn. 453, 469. Chapman was accused of killing a police officer in New Britain. The newspapers gave the case wide publicity. The motion for change of venue was supported, as here, by considerable evidence tending to show a liability to local prejudice in Hartford County due to the unusual publicity given to the case, particularly in the newspapers. Chapman was a rather colorful criminal and the newspapers exploited, spiced, dramatized and colored their stories to attract the reading public. The trial court ruled that, in spite of the publicity given the case, a fair trial could be given the accused in Hartford County and the Supreme Court sustained this ruling in these words: "It is within the reasonable discretion of the trial court to grant a change of venue when it clearly appears that a fair and impartial trial cannot be had in the county where the venue is laid in the indictment. The *burden of showing this is upon the mover of the change of venue.*" *Crocker v. Justices of the Superior Court*, 208 Mass. 162, 94 N. E. 369; *Downs v. State*, 111 Md. 241, 73 Atl. 893; *Burns v. Pennsylvania R. Co.* 222 Pa. St. 406, 71 Atl. 1054; *People v. Pfanschmidt*, 262 Ill. 411, 440, 104 N. E. 804.

Another important case in which this question was raised and pressed as a ground for appeal was that of *State v. Palke*, 122 Conn. 529 at 537. In that case the accused was charged with killing a Bridgeport police officer, and he moved for a change of venue on the ground that there had been such wide publicity of a nature so derogatory to him that a fair trial by an impartial jury could not be had in Fairfield County. The Supreme Court held that the "burden of showing this is on the mover of the change of venue." The power to grant a change of venue is to be exercised with caution and rests in the Court's sound discretion, which is final unless it appears clearly that it has exercised the discretion unreasonably. *State v. Chin Lung*, 106 Conn. 701, 717.

This question was more recently raised in the case of *State v. Rogers*, 143 Conn. 167, 171. The basis of the two motions for a change of venue was the widespread publicity given the killing of Mrs. Kennedy while she was alone in a package store, and later, the publicity attending the defendant's statement to the police and to the coroner. The trial court denied the motion and this decision was sustained by the Supreme Court on the ground that the burden of showing that a fair and impartial trial could not be had in the county of origin is on the defendant, and that he must show more than that the crime received considerable publicity. He must demonstrate that the publicity was necessarily prejudicial to him and prevented his being accorded a fair and impartial trial. *State v. Rocco*, 109 Conn. 571, 572; *State v. Leopold*, 110 Conn. 55, 58.

There are some instances where a failure to grant a change of venue has been held to be error. In the case of *Shepherd et al v. Florida*, 341 U.S. 50, the United States Supreme Court ruled that the Florida trial court should have granted a change of venue and that the State Supreme Court should have overruled the trial court for failing to do so. In this case the accused were negroes charged with rape of a white girl. The newspapers had falsely published that the accused had confessed, but no confessions were offered at the trial. The newspapers attributed the information to the sheriff who failed to repudiate the story. The aroused public opinion caused by inflammatory newspaper articles was mainly due to race prejudice and a claim by the state that "inflamed public sentiment was against the crime with which the defendants were charged rather than the defendants' race was more charitable than realistic." There is no need to emphasize that no such prejudice could possibly exist in Hartford County.

In the case of *United States v. Florio*, 13 F.R.D. 296, Judge Kaufman granted a change of venue because he found it impossible to give the defendant a fair trial in New York due to inflammatory publicity. The Federal rule differs from our statute in that the Court is virtually ordered to transfer where the Court is satisfied that there exists so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in the district in which he is first charged. The trial judge found that such prejudice existed. *United States v. Parr*, 17 F.R.D. 512;

Cox v. State, 234 S. W. 72; *State v. Crafton*, 56 N. W. 257; *Gallagher v. State*, 50 S. W. 388.

In the case of *Delaney v. United States*, 199 Fed. (2nd) 107, the Court ruled that failure to grant a postponement of the trial was error, because Congressional investigation of the affairs of the defendant was in progress at that time and the rights of the defendant prejudiced. This ruling apparently fitted the circumstances of the case, but is not authority for defendant's claims because no motion for change of venue was filed.

It is fair to say that the preponderance of judicial opinion on the subject calls for a finding by the trial court that public prejudice would preclude a fair trial. Intemperate expressions of a mass of people following inflammatory publicity are insufficient to show the impossibility of a fair trial in a county the size of Hartford County. 58 A. J. Section 70; *Elias v. Territory*, 9 Ariz. 1, 76 Pac. 605; *State v. Schneider*, 158 Wash. 504, 291 Pac. 1093. Proof that derogatory articles were published in some of the cities of the county, and publicized throughout the county by radio and television is not proof that a fair trial cannot be held within the county, or that the county as a whole is so prejudiced that a fair trial cannot be had. *Penn. R. Co. v. Reading*, 254 Pa. 110, 98 A. 791; *State v. Gordon*, 32 N. D. 31, 155 N. W. 59.

From the evidence presented, the Court is of the opinion that a jury can be selected in Hartford County that would be fair and impartial, and that the defendants will get a fair trial. With the peremptory challenges enjoyed by each defendant under our law and with the additional safeguards assured them by a fair and impartial presiding judge, during the selection of a jury, the defendants will be doubly guaranteed of a fair trial.

The motions for a change of venue are denied.

BORDEN, *J.*

Filed April 1, 1957.

At a Criminal Session of the Superior Court, holden at Hartford in and for the County of Hartford, in the State of Connecticut, on the first Tuesday of April, in the year of our Lord, one thousand nine hundred fifty-seven.

Present, HON. JAMES C. SHANNON, JUDGE.

No. 21666

STATE

vs.

ARTHUR CULOMBE, ALIAS ARTHUR COLOMBE.

June 28th, 1957.

The Grand Jurors within and for said County accuse Arthur Culombe, alias Arthur Colombe, of Hartford, Connecticut, of the crime of Murder in the First Degree and charge that at the City of New Britain, in said County of Hartford, on the 15th day of December, 1956, the said Arthur Culombe, alias Arthur Colombe, murdered one Edward J. Kurpiewski, and that said murder was committed in perpetrating a robbery, as charged in the First Count, and further accuse the said Arthur Culombe, alias Arthur Colombe, of Hartford, Connecticut, of the crime of Murder in the First Degree and charge that at the City of New Britain, in said County of Hartford, on the 15th day of December, 1956, the said Arthur Culombe, alias Arthur Colombe, murdered one Daniel J. Janowski, and that said murder was committed in perpetrating a robbery, as charged in the Second Count, as by said indictment on file will appear.

To said indictment, on March 14th, 1957, the said Arthur Culombe, alias Arthur Colombe pleaded and said he was not guilty and elected to be tried by a Jury.

On March 15, 1957 the said Arthur Culombe, alias Arthur Colombe, filed a Motion for Change of venue and on April 1, 1957 the court (BORDEN, *J.*) denied said Motion.

On April 23, 1957 the said Arthur Culombe, alias Arthur Colombe, made an oral Motion for Change of venue and on the same day the court (SHANNON, *J.*) denied said motion.

Jurors sworn:

Santo Cannarella	Roger C. R. Miller
George W. Hannon	Mrs. Viola Vincent
John F. Madden	Mrs. Ada Hodgson
Carmen Pace	Richard G. Rothwell
George W. Williams	Mrs. Maryanne Thomas
Miss Mildred Mastrobattisto	Michael Nolan

Alternate—Roger W. Eddy
Alternate—Mrs. Alice Bacon

Said cause having been fully heard and committed to the Jury, they by their verdict, find the said Arthur Culombe, alias Arthur Colombe guilty of the crime of Murder in the First Degree as charged in the First and Second Counts of said indictment. The court accepted said verdict. The defendant thereupon filed his Motion to set aside the verdict and the court having heard the parties on said Motion denied the same this day.

WHEREUPON, this Court doth accordingly adjudge the said Arthur Culombe, alias Arthur Colombe, guilty as charged in the First and Second Counts of said indictment and that he be imprisoned in the Connecticut State Prison until December 16, 1957, upon which day he shall be put to death by electrocution, according to the law of the State of Connecticut.

By the Court,

DOMINIC A. DICORLETO,
Assistant Clerk.

MOTION TO SET ASIDE VERDICT.

The defendant hereby moves to set aside the verdict rendered in the above case because:

1. It is contrary to law.
2. It is against the evidence.

Motion to set aside verdict.
Filed June 27, 1957.
Motion Denied—6/28/57.

SHANNON, *J.*

No. 2166	Superior Court,
STATE OF CONNECTICUT	Hartford County,
vs.	Criminal Session,
ARTHUR CULOMBE.	July 3, 1957.

DEFENDANT'S APPEAL.

In the above-entitled action the defendant, Arthur Culombe, appeals to the Supreme Court of Errors from the judgment rendered therein and from the decision of the Court denying the motion to set aside the verdict.

Appellant-Defendant,

ARTHUR CULOMBE,

By THOS. F. MCDONOUGH,

Special Public Defender.

You, Thomas F. McDonough, of Hartford, deemed by me to be of sufficient financial responsibility to pay any costs which may be adjudged against Arthur Culombe on his Appeal in the above-entitled action, as surety, acknowledge yourself to be bound to the State of Connecticut, plaintiff in said action, in a recognizance in the sum of $150.00, that the said Arthur Culombe will prosecute the foregoing appeal to full effect and pay any costs for which judgment may be rendered against him.

Dated at Hartford this 3rd day of July, 1957.

WILLIAM F. FERGUSON,

Commissioner of the Superior Court.

I certify that the foregoing appeal was filed on the third day of July, 1957; that the defendant has paid the record fee of the Supreme Court of Errors and the entry fee; and that Thomas F. McDonough is recognized in the sum of One Hundred Fifty Dollars, conditioned that the said defendant shall prosecute said Appeal to effect, and pay all costs therein if he should fail to do so, and said Appeal is hereby allowed.

WILLIAM F. FERGUSON,

Assistant Clerk of the Superior Court.

DEFENDANT'S REQUEST FOR FINDING.

The appellant (defendant) in the above-entitled case respectfully requests a Finding of Facts for an appeal to the Supreme Court of Errors, and submits the draft finding hereto annexed.

QUESTIONS OF LAW.

The questions of law which he desired to have reviewed are:

1. Did the Court err in refusing to grant a Change of Venue where the evidence disclosed a vast amount of publicity by newspapers, radio, and television which created in prospective jurors a deepseated hostility towards the defendant, making it impossible for him to obtain a trial by a fair and impartial jury?

2. Did the Court err in permitting the introduction into evidence of the alleged confessions of Culombe after it was shown the same was obtained by coercion and duress of a psychological nature?

3. Did the Court err in admitting into evidence those portions of the confession of the co-defendant, Taborsky, which implicated the defendant, Culombe, notwithstanding the Court's instruction to the jury to disregard this matter as to the defendant Culombe?

4. Did the Court err in refusing to grant a motion to dismiss the action against Culombe where the only evidence implicating the defendant, Culombe was his own admissions and confession?

5. Did the Court err in refusing to grant a motion to dismiss the case against the defendant, Culombe, where the evidence produced by the State against him was not that of two witnesses or the equivalent of two witnesses?

6. Did the Court err in refusing to grant a motion to set aside the verdict of the jury where the same was contrary to and inconsistent with the evidence produced?

7. Did the Court err in refusing to excuse the juror George W. Hannan, who participated, as a member of a public authority, in voting for a reward for the capture and conviction of

the persons responsible for a killing in East Hartford, when it was shown that the defendant, Culombe, was charged with such killing and newspapers had reported a confession by him?

8. Did the Court err in not furnishing counsel to Culombe at his arraignment prior to any proceedings which resulted in his being remanded to police custody?

9. Did the Court err in remanding Culombe to the custody of police, and in holding a hearing thereon without first furnishing him with counsel, as he had requested?

10. Did the Court err in not granting the motion to set aside the verdict where there was no proof of a robbery's having been committed, as set forth in the indictment, during which the killings of the victims allegedly occurred?

DRAFT FINDING.

FIRST:

Upon the trial of this case to the jury the State offered evidence to prove and claimed proof of the following facts:

26. The witness Rosohn was not able to state that the bottles shown him were the same as those he gave to officer Gutowski. (T. 126)

27. The bullets found in the men examined were distorted, disfigured, and had no external configuration similar to that which is usually associated with a bullet. (T. 128)

32. Arthur Culombe was held in the State Police Barracks under arrest from Saturday evening at about 10:00 p.m. until the following Tuesday morning before being arraigned before any Court. (T. 396A)

33. After holding Arthur Culombe in State Police Headquarters in a cell under arrest from Saturday evening, the State Police took him to New Britain the following Monday afternoon to be booked for Breach of the Peace. (T. 397)

34. On Tuesday morning Arthur Culombe was brought to the Police Court in New Britain, returned to the State Police Headquarters in Hartford, and then taken to the County Jail. (T. 402)

35. Culombe was arrested for a violation of Section 195 (d) of the 1955 Supplement to the General Statutes, but was at no time arraigned on this charge, but was charged with Breach of the Peace in the Police Court of New Britain. (T. 486-488)

36. Culombe was not booked or charged with the commission of, or suspicion of, the commission of a felony when presented to the New Britain Police Court.

37. Culombe was arrested and presented before the Honorable Judge Abraham S. Bordon of the Superior Court on Thursday morning following his arrest.

38. On Wednesday, February 27, 1957, following his appearance in court, Culombe was taken from the County Jail and brought to the State Police Barracks against his wishes and contrary to a court order requiring that he be held at the jail.

39. A statement was taken from Arthur Culombe by the police regarding his involvment in the crime charged here.

40. In a proceeding before the Superior Court, Judge Abraham S. Bordon presiding, Culombe was remanded to the custody of the police without counsel first being provided for him.

FIFTH:

Hearing on motion for change of venue.

1. The defendant, Arthur Culombe, moved for a change of venue on the grounds that because of the inordinate publicity in newspapers, on radio and on television, a fair and impartial trial could not be obtained.

2. The following newspapers were brought into Court through their editors:

Hartford Times	Sunday Herald
Hartford Courant	Manchester Herald
New Britain Herald	Bristol Press

3. The editors of these newspapers related the extensive coverage given the series of murders allegedly committed by the defendant.

4. The newspaper stories featured the alleged confessions of the defendant.

5. Editorials named the defendant as a "mad dog killer."

6. The following radio stations' personnel were brought to Court:

WPOP WTIC WDRC WCCC

7. The witnesses related the extensive coverage given the murders, the apprehension of the alleged killers, and the confessions obtained from the defendant.

8. The following television stations' personnel were brought to Court:

WNBC WHCT

9. The witnesses related the extensive coverage of the television stations to the series of killings.

10. Extensive coverage was given to the confessions allegedly obtained from the "mad killers."

11. A cross section of citizens, county wide, testified to the effect upon the public of the news coverage as detrimental to the defendant. Prospective jurors in the panel of talesmen related that they knew of the confessions, read the newspaper stories, listened to radio broadcasts and television newscasts regarding the apprehension of the defendant, of his background and his confession of guilt.

12. Jurors were placed on the trial jury who had a preconceived notion of the defendant's guilt from the reading and hearing of the confession he allegedly had made.

13. One juror, George W. Hannan, participated in voting for a reward for the capture and conviction of the killers, and allegedly defendant was one.

14. A motion was made to excuse the said juror for cause, which was denied, that a motion made to permit the use of a preempting challenge was denied.

15. The information regarding this juror was not known to the defendant until after he was accepted on the jury.

Respectfully submitted,

Defendant, ARTHUR CULOMBE,
By THOS. F. MCDONOUGH,
His Attorney,
Special Public Defender.

Filed October 31, 1957.

FINDING.

I.

Upon the trial of this case to the jury the State offered evidence to prove and claimed to have proved the following facts:

1. On December 15, 1956, at about six o'clock in the afternoon, the witness Staron entered a gas station on Stanley Street in New Britain and discovered the body of a man in the furnace room.

2. After discovering the body of the first man, the witness Staron entered the men's room, so-called, of the gasoline station and discovered the body of another man.

3. The body of the first man found in the furnace room was in a sitting position; the body of the second man was in a sitting position underneath the washbowl in the men's room.

4. On the toilet floor there was a considerable amount of blood.

5. The body of the man found in the furnace room of the gasoline station was warm when the witness Kelly arrived there.

6. The witness Kelly examined the body of the man found in the furnace room and determined that he was dead.

7. The witness Kelly found a 1954 green Ford automobile parked at the south pump of the gasoline station.

8. There was a little girl in the front seat of the automobile.

9. The witness Kelly examined the body of the man found in the furnace room and upon searching his pockets found several dollars.

10. The witness Harper arrived at the gasoline station and took some photographs at the scene.

11. Investigation at the gasoline station did not disclose any fingerprints or other identification marks.

12. A hole found in a rear window was unable to be identified as to its cause or time of being made.

13. A search of the premises at the gas station did not disclose any spent bullets or cartridge shells.

14. One of the dead men found at the gasoline station was Edward Kurpiewski, and the other dead man was Daniel Janowski.

15. At about 6:15 to 6:30 p.m. on December 15, 1956, the witness Doctor Takarczyk came to a gasoline station on Stanley Street, New Britain, and, after examining two men, pronounced them dead.

16. On the morning of December 16, 1956, at the New Britain General Hospital the witness Dr. Paul D. Rosohn performed an autopsy on the body of one Edward Kurpiewski and, as a result of said autopsy, determined that the cause of Kurpiewski's death was a bullet wound in the head.

17. Examination of the skull of Kurpiewski revealed the presence of a bullet and a fragment of a bullet.

18. The bullet and fragment of a bullet were placed in a specimen jar by the witness Dr. Rosohn and given to a police officer named Joseph Gutowski.

19. On the morning of December 16, 1956, the witness Dr. Paul D. Rosohn performed an autopsy on the body of Daniel Janowski and determined the cause of death to be due to bullet wounds in the head.

20. Examination of the skull disclosed the presence of two bullets and a fragment of a bullet.

21. The two bullets and the fragment were placed in two containers and given to police officer Joseph Gutowski.

22. The containers in which the bullets were placed were not sealed. The containers were ordinary jars obtainable from any hospital supply house. There was nothing unique about the jars.

23. Examination during autopsy did not disclose any powder burns on the body of Daniel Janowski.

24. Examination of the body of Edward Kurpiewski disclosed some evidence of powder burns.

25. The witness Coffey, a police officer, searched the station and found in the top drawer of a metal desk the sum of one hundred thirty-three ($133) dollars in bills and eight dollars seventy-five cents ($8.75) in silver.

26. On the afternoon of December 15, 1956, Joseph Taborsky and Arthur Culombe were seen together in front of 21 Coleman Drive, Hartford, Connecticut.

27. In the evening of December 15, 1956, Joseph Taborsky and Arthur Culombe were seen together in front of 21 Coleman Drive, Hartford, Connecticut.

28. On February 23, 1957, Joseph Taborsky and Arthur Culombe were together in front of 226 Park Terrace, Hartford, Connecticut, and were instructed by two State policemen to report to State Police Headquarters.

29. On December 15, 1956, the accused, Arthur Culombe, was 32 years old and lived in a housing project No. 20 Coleman Drive in Hartford with his wife and two small children.

30. At and since December 14, 1953 Culombe had been employed by the Hartford Despatch & Warehouse Company. He was a freight handler, unloading freight from railroad cars and trucks. Since April 1956 he was paid $1.87 per hour, forty hours per week, eight hours per day. His net weekly take home pay varied according to overtime, such as $95.02 for the week of July 14, 1956 and $82.28 for the week of November 17, 1956.

31. On December 15, 1956, the accused, Joseph Taborsky, was 33 years old; formerly lived in Hartford and moved to Brooklyn, New York in September 1956. He married in October, 1956. While in Brooklyn he obtained work on moving vans but the employment was unsteady, due to lack of union seniority.

32. From November 1956, during weekends, Taborsky visited Culombe at Culombe's home at 20 Coleman Drive, Hartford.

33. In the evening of Friday, December 14, 1956 and during the day and evening of Saturday, December 15, 1956, the Hartford and New Britain area suffered a severe ice storm which caused a general breakdown in the power and lighting system in both areas.

34. On Saturday, December 15, 1956 at about 12:00 o'clock noon, Arthur Culombe purchased a used television set from one Frank J. Franczek in East Hartford. He paid a deposit of $10.00 and agreed to pay the balance in installments of $5.00 each week.

35. Culombe paid said Frank J. Franczek the entire balance of $21.50 the next Monday, December 17, 1956.

36. In the afternoon of December 15, 1956 Joseph Taborsky and Arthur Culombe removed a television set from an automobile parked across the street from Culombe's house No. 20 Coleman Drive, Hartford and carried it into Culombe's house.

37. Kurp's Tydol Gas Station conducted by Edward Kurpiewski of New Britain was located on the east side of and known as No. 1707 Stanley Street in New Britain.

38. At or about 6:30 o'clock in the afternoon of December 15, 1956 due to the ice storm there was a failure of power and lights on Stanley Street in the vicinity of Kurp's Gas Station.

39. At said time Kurp's Gas Station was brightly lighted both inside and out by private generators.

40. Taborsky and Culombe had been acquainted since 1951.

41. On the afternoon of Saturday, December 15, 1956, about 6:00 o'clock p.m. Taborsky and Culombe, both armed, drove in a southerly direction along Stanley Street in New Britain. Culombe was driving the car with Taborsky in the passenger seat. Their purpose was to find a favorable place for a hold-up.

42. While proceeding along Stanley Street they passed Kurp's Gas Station for a short distance when Culombe, the driver turned the car around and drove to and entered the premises of said Kurp's Gas Station.

43. The car was then parked between the gas pumps and the service station building headed in a northerly direction.

44. At this time, the proprietor, Edward Kurpiewski, came from the service station building and Culombe asked him to fill up the gas tank.

45. Kurpiewski was wearing a gas station attendant's cap with a black visor.

46. While Kurpiewski was filling up the gas tank Taborsky announced that he wanted to go to the toilet whereupon he left the car and entered the gas station.

47. In the meantime Kurpiewski filled the gas tank and Culombe paid him $2.00.

48. Culombe then walked toward the gas station stating he was going to the men's room.

49. Kurpiewski followed him and when Kurpiewski entered the door to the station Culombe drew his gun, pointed it at Kurpiewski, told him it was a stick-up and ordered him to put up his hands.

50. Culombe then ordered Kurpiewski into the boiler room which was situated at the east side or rear of the station in a direct line with the entrance door.

51. Kurpiewski entered the boiler room followed by Culombe gun in hand.

52. Culombe ordered Kurpiewski into the corner of the room and when he failed to comply Culombe pushed him with his left hand.

53. Kurpiewski hit the wall with his back then appeared to come toward Culombe.

54. Culombe again pushed Kurpiewski and the gun went off, the bullet striking Kurpiewski in the head.

55. Kurpiewski dropped to the floor in a sitting position whereupon Culombe lifted his body and took a wallet from his rear pocket.

56. Culombe then left the boiler room and joined Taborsky in the main office of the station.

57. Taborsky and Culombe searched for money and in doing so pried open the cash register and took some money which Taborsky put in his pocket. Some more money was found in the desk. The cabinet and some boxes were searched.

58. While the search was in progress Daniel J. Janowski of New Britain, accompanied by his 18 old months daughter, drove his car into the gas station drive headed in a southerly

direction and parked his car at the south gas pump. His car was a green 1954 Ford.

59. Taborsky and Culombe waited a few moments and when Janowski failed to drive away both left the station and approached the Janowski car.

60. Culombe pretended to be a gas attendant and upon inquiry of Janowski as to the amount of gas he wanted was told two dollars worth.

61. As Culombe reached for the gas hose Taborsky pointed a gun at Janowski, took his wallet containing $4.00 and ordered him into the station and then into the toilet which was located in the rear of the station adjoining the boiler room on the south.

62. Janowski entered the toilet followed by Taborsky.

63. Thereupon Taborsky shot Janowski twice in the left side of the head just above the ear and Janowski slumped to a sitting position on the floor between the toilet and the wash bowl.

64. Taborsky and Culombe then drove to Culombe's home in Hartford where the money taken from the gas station and the wallets totaling $100 and $133 was divided equally between them.

65. Taborsky then gave to Culombe the gun with which Taborsky shot Janowski and the wallet he took from Janowski. Culombe threw this wallet and the one he took from Kurpiewski either in the rubbish in his yard or in a brook across the way on Flatbush Avenue. Culombe put the two guns in his safe. The following day he threw them into the swamp at the corner of Newfield and Dexter Avenues in Hartford.

66. Between 8:00 and 9:00 o'clock in the evening of said December 15th, Taborsky and Culombe were sitting together in a car parked in front of Culombe's home at Coleman Drive, Hartford.

67. As a neighbor, John Harris, approached the car, Culombe rolled down the window on the passenger side. Harris looked in the car, recognized Taborsky and Culombe and offered to assist them by giving their car a shove which was refused.

68. At about 6:00 o'clock in the afternoon of said December 15th, Chester Staron, a bus driver, stopped his bus on the west side of said Stanley Street in front of said Kurpiewski's Gas Station and went into the station to use the telephone. As he passed the pumps he saw a green 1954 Ford parked by the pumps and facing south. He noticed no occupant of the car at the time.

69. When he entered the gas station he hollered out asking if anybody was around. There was no answer and he decided to use a telephone down the road. When he left the gas station he noticed a little girl in the parked 1954 Ford with her nose pressed against the window.

70. Thereupon Staron returned to the gas station, opened the boiler room door and discovered the body of a man unknown to him but later identified as Edward Kurpiewski. He was in a sitting position with his head tilted forward. Staron noticed a furnace in the room and some cases of soda. He shook the man and called to him but there was no answer.

71. Staron then left the room and opened the door to the Men's Room. There he found another man unknown to him but later identified as Daniel Janowski. He was in a sitting position underneath the washbowl with his head tilted forward. There was a considerable amount of blood on the floor in the toilet. Staron called the police and awaited their arrival.

72. Captain Kelly of the New Britain Police Department arrived at the gas station at approximately ten minutes after six o'clock p.m. He found Kurpiewski in the boiler room in the corner in a sitting position with his head drooped forward. His body was warm and he was bleeding from a wound over his left forehead. Believing him still alive, Kelly and another officer moved him on a stretcher into the office. Shortly thereafter he was pronounced dead by the medical exeaminer.

73. Captain Kelly then entered the Men's Room and found the body of Janowski. He was in a sitting position next to the toilet and under the washbowl. Blood was on the floor and he was bleeding from the left side of his head. Shortly thereafter he was pronounced dead by the medical examiner.

74. Captain Kelly went outside the station and found the little girl in the car and had her taken to Police Headquarters. The little girl was Cheryl Janowski, about a year and one-half old and was the daughter of said Daniel Janowski.

75. In the gas station the drawer to the desk was found open and papers strewn on the floor.

76. A cap with a visor (State's Exhibit T) belonged to Edward Kurpiewski and he was wearing the cap in the afternoon of December 15th.

77. On December 15th at about 7:30 p.m. the cap (State's Exhibit T) was found against the west wall in the boiler room where the body of Kurpiewski was found.

78. In front of the gas station between the sidewalk and the pumps was a commercial gas sign with the printed words

FLYING

A

SERVICE

with wings protruding from both sides of the letter "A". (State's Exhibit J).

79. The death of Edward Kurpiewski on December 15, 1956 was caused by a bullet wound in the head. The point of entry of this bullet was located in the left temporal region just above the left eye with no point of exit. Dr. Rosohn, the pathologist, who conducted the autopsy removed the bullet and fragment of a bullet from Kurpiewski's head. (State's Exhibit Q).

80. The cause of death of Daniel Janowski was two bullet wounds in the head above the left ear and beneath the hair. Dr. Rosohn performed an autopsy and removed two bullets and a fragment from Janowski's head. (State's Exhibit R1 and R2).

81. During the investigation of the deaths of Kurpiewski and Janowski, State Police Officers Moran and Griffin, on February 23, 1957 at about 2:10 p.m. observed Taborsky and Culombe leaving the home of Taborsky's mother on Park Terrace, Hartford. The officers approached them just as they were entering a parked car in front of the Taborsky home when Officer

Moran told Taborsky that Lt. Rome wanted to talk to him at State Police Headquarters. Taborsky stated that he was willing to go.

82. Taborsky, with Culombe driving, followed the officers' car to State Police Headquarters on Washington Street, Hartford, where Culombe stopped the car. Taborsky left the car and walked into Headquarters with the police while Culombe drove off.

83. About 2:30 o'clock the same afternoon Sgt. Paige and Officer Reimer of the State Police went to Culombe's home at 20 Coleman Drive, Hartford, to bring him back to the State Police Barracks. His wife reported he was in the toilet and during the five minute wait the officers could hear the sound of metallic noises coming from the toilet.

84. Culombe was then taken to State Police Headquarters where Lt. Rome talked to both Taborsky and Culombe. Both agreed to accompany officers to different places for purpose of identification.

85. Taborsky and Culombe then accompanied Sgt. Paige and two other officers to the towns of Coventry and Rocky Hill. They had supper, then returned to the State Police Barracks.

86. Upon return to the barracks Culombe told Sgt. Paige he was a gun collector and he had seven or eight guns at his house which he agreed to turn over to the police.

87. Sgt. Paige and Officer Carlberg went with Culombe to his home.

88. Culombe left the officers in the living room, went to the toilet, then to a bedroom where the officers found him with two guns, a .25 and a .38. They found a .25 clip of cartridges with bullets in the drawer he had first closed. In a small safe they found six guns and three boxes of ammunition. (State's Exhibits X, Y).

89. Thereupon Culombe was returned to the barracks and Sgt. Paige talked to Culombe for a short while then discontinued the investigation. Lt. Rome talked with Culombe about two hours that evening then Culombe was locked up for the night at the barracks.

90. During the investigation Culombe was questioned about the New Britain affair of December 15th as well as other matters.

91. Lt. Rome placed Culombe in custody at 10:00 o'clock Saturday evening, February 23rd.

92. The next day, Sunday, Culombe was questioned for a short time about the New Britain shootings and denied he was involved.

93. Monday, February 25th, Culombe told Lt. Rome he wanted a lawyer but refused to give the name of any specific lawyer. Lt. Rome told him he could have a lawyer if he would tell him whom he wanted him to call.

94. On said Monday afternoon, Culombe was taken to New Britain and booked for Breach of the Peace at New Britain Police Headquarters.

95. On Tuesday evening, February 26th, he was presented in the New Britain Police Court.

96. The case was continued one week by the Court and Culombe was committed to jail under $25,000 bail awaiting trial. (Culombe's Exhibit 6).

97. On Wednesday, February 27th, at about 1:00 p.m. Sgt. Paige and Detective Murphy had a conference with Culombe at State Police Headquarters concerning the New Britain affair and other matters.

98. In the course of the conference Sgt. Paige requested Culombe's assistance in cleaning up this case whereupon Culombe admitted "they were looking for four guns, two of which would be under water and were looking for two men and that he himself had not done any killing."

99. Culombe then agreed to show the officers where the guns were.

100. Culombe then left headquarters with Lt. Rome, Sgt. Paige, Detective Murphy and Detective O'Brien and drove to Culombe's home in a police car.

101. En route, Culombe made a statement which Detective O'Brien took down in shorthand. In the statement Culombe

stated that he and Taborsky had driven to New Britain, that the streets were icy and some trees were down. They passed a gas station and Taborsky instructed him to go in, and he drove in and stopped at the gas pump, and when the attendant came out he, Culombe instructed the attendant to fill the tank. It only took about five or seven gallons to fill it. While the attendant was doing that Taborsky asked if there was a men's room and he was told there was. He went inside the station. After the gas tank was filled Culombe paid the attendant with a two dollar bill. When the attendant went into the station Taborsky pushed him into a room which Culombe thought was an engine room or a boiler room and he heard a shot. Taborsky came back out into the office of the gas station and about that time a customer drove into the gas station and stopped at the pumps. As Culombe was about to service this car Taborsky emerged from the station and said to the customer, "Hey, your buddy wants to see you inside." He put a gun on him and ordered him into the station and into the men's room. Culombe heard two shots. Shortly after Taborsky came out and they left. He was asked by Lt. Rome how much money they realized, and he said it was about $133.00.

102. When the police and Culombe arrived at Culombe's home, Lt. Rome, following Culombe's instructions, removed a medicine chest from the wall in the bathroom and back of the medicine chest between the walls he found a leather brief case containing a gun and two blackjacks.

103. Shortly thereafter Culombe opened the safe in the bedroom and Lt. Rome found a metal box with some parts of a gun, consisting of a spring to a revlover, two revolver grips or handles and the pin which secures them to a revolver and a revolver cylinder pin. (State's Exhibit GG).

104. Culombe, while in the living room with his wife, young daughter and Detective Murphy, told his wife that he had decided to cleanse his conscience and make a clean breast of things and that he had told the police a true story. He also said he might get life but that Taborsky would get the chair and that he didn't want to cause her any further embarrassment. He further told his wife that he was afraid for her, he was afraid Taborsky might attempt to do her harm which was another reason for cooperating with the police.

105. Upon Culombe's direction the officers and Culombe drove to the intersection of Newfield Avenue and Dexter Avenue in Hartford where Culombe said he would show where some guns were located. When they arrived there Culombe pointed out a pond where they would find two guns and that the parts of the gun found in the metal box would fit one of the guns.

106. At Culombe's direction the officers with Culombe drove to Dexter Avenue and Reed Avenue to another swampy area. Culombe told the officers they would find a raincoat in the swamp with the number 16594 in the collar. Detective Murphy found the raincoat and took it out of the water. Culombe identified it as his coat and said it was worn by Taborsky on the night they went to New Britain.

107. The raincoat had blood stains of human origin present on the right sleeve and left lapel.

108. Culombe directed the officers to a brook in the neighborhood which runs under Chandler Street where he stated he discarded some wallets in some brush in that area. A search was made but the wallets were not found.

109. Thereupon they returned to Culombe's home and at the direction of Culombe they found under a cabinet in the basement a mutilated gun in a paper bag.

110. Culombe directed the officers to Borden's Service Station in Hartford where he pointed out a 1949 black Oldsmobile which he stated he previously owned and was used the night they had gone to New Britain.

111. Culombe and the officers returned to State Police Headquarters about 6:10 p.m. where in the presence of Commissioner Kelly and Major Remer, Culombe admitted he had participated in the New Britain crime.

112. After supper, around eight o'clock with Lt. Rome, Detective O'Brien, County Detective Matus and Sgt. Paige, Culombe signed a written statement in which he described the holdup and killings in New Britain on December 15th and another incident. (State's Exhibit Z1 for Ident.)

113. Later Lt. Rome caused to be drawn another statement which was confined solely to the New Britain incident and read

substantially the same as the New Britain incident described in the February 27th statement signed by Culombe. (State's Exhibit Z).

114. On March 3rd at the County Jail, Lt. Rome, in the presence of Detective O'Brien, read to Culombe his signed statement of February 27th of the New Britain incident only, then read the new statement and explained to him the purpose of the new statement was to confine the statement to the New Britain incident alone. Thereupon Culombe signed the statement (State's Exhibit Z).

115. Thursday morning, February 28th, Culombe was served with a bench warrant issued by the Superior Court and was presented that morning before Honorable Abraham S. Bordon, Judge. (State's Exhibit BB).

116. Upon inquiry by the Court, Culombe said he wanted a lawyer but refused to accept the public defender. Culombe stated he would like Attorney McDonough but was unable to pay for his services. The Court then informed Culombe that the Court would see that he had an attorney of his own choosing even though it may be necessary for the state to pay for his services. He informed Culombe the police wished to conduct an investigation into the charges against him and that Culombe had the right if he wished to say nothing or may, if he wished, cooperate with the police. Culombe stated he was willing to cooperate with the police and he would do so voluntarily. Thereupon the Court ordered Culombe released to Commissioner Kelly for the purpose of continuing the investigation.

117. After court, Culombe voluntarily accompanied Lt. Rome and other officers to said Kurp's Gas Station in New Britain where he re-enacted his activities at the gas station on December 15th.

118. Culombe pointed out that the cash register as now located was in a different place than that of December 15th. He said he thought it was near the window the night of December 15th, whereas now it was on a counter near the wall between the boiler room and toilet.

119. The location of the cash register had been changed since the night of December 15th. (State's Exhibit S).

120. At Culombe's request on said February 28th he remained at the State Police Barracks rather than at the jail.

121. On Saturday evening, March 2, 1957, State Policeman, John Fersch was assigned to guard Culombe in his cell at the State Police Barracks.

122. At about 10:00 p.m. while the officer was sitting in a chair outside the cell reading a book, Culombe called to him and said he wished to volunteer some information relative to the events that occurred at Kurp's Gas Station in New Britain on the night of December 15, 1956.

123. Culombe then told the officer substantially the same story contained in his confession (State's Exhibit Z) except that it was he (Culombe) who followed the attendant (Kurpiewski) into the gas station and after he got in there he put his gun on the attendant and forced him into the boiler room where he shot him. After shooting him he turned the body over and took his wallet from the attendant's back pocket.

124. The next day Sunday, March 3rd, Lt. Rome and Officers Moran and Fersch met with Culombe at State Police Headquarters and in answer to Lt. Rome, Culombe said he wished to change his previous statement of February 27. (State's Ex. Z).

125. He then made a written statement wherein he stated that on the evening of December 15th at the gas station after the attendant filled up the tank he (Culombe) told him he was going to the men's room and walked inside the station. The attendant followed him in and just as soon as he got in the door he put his gun on him. He told him this was a stick-up and ordered him to put up his hands. He did not put up his hands, but when he told him to go into the boiler room he did and Culombe followed after him still pointing the gun at him. He told him to get into the right corner of the room but he did not seem to want to do what he told him so Culombe pushed him with his left hand. He hit the wall with his back, then he seemed to come at Culombe and then Culombe pushed him again and the gun went off. He thought the bullet hit him in the head but was not sure. The attendant dropped to the floor in a sitting position and Culombe lifted his body and took a wallet from the rear pocket. He then left the boiler room to search for money. (St. Ex. EE).

126. The remainder of the statment was substantially as told by Culombe on February 27th State's Exhibit Z and Z1 for Identification. (State's Exhibit EE).

127. On February 28, 1957, State Policemen Hickey and Fersch caused a search to be made of the pond or swamp at Newfield and Dexter Avenues in Hartford for the two guns which Culombe said would be found there.

128. Officer Hickey with eight or nine employees of the Farmington Construction Co. were engaged in this work when an employee Paul Dubrosky hooked into a pistol with his potato hook.

129. This pistol, a Russian Nagant Revolver, State's Exhibit MM, was shown to Culombe on February 28 at Newfield and Dexter Avenues and Culombe said it was his gun and was the gun he gave Taborsky the night of the holdup of the gas station in New Britain.

130. On Saturday, March 2nd, about noon, at State Police Headquarters, the pistol (State's Exhibit MM) was shown to Taborsky by Lt. Rome in the presence of Sgt. Paige. Taborsky stated that he recognized the gun as the one loaned to him the night of December 15th. He stated he recognized the gun by the plastic handles, a crack in the handle and the writing on the side.

131. At the trial the witness Lt. Rome pointed out to the Court and jury the crack in the plastic handle of the revolver (State's Exhibit MM) and some writing on the revolver.

132. On March 4, 1957, State Policeman French was conducting a search for the other gun at the swamp at Newfield and Dexter Avenues, the place Culombe stated he had thrown the two guns.

133. During the search a gun was picked up at that location by means of a magnetic crane.

134. The revolver was a .32 calibre Harrington-Richardson, Young American revolver and was incomplete in that the hammer screw, the bearing rod, main spring and grips were missing. (State's Exhibit NN.)

135. The parts of a revolver found in the metal box in Culombe's house (State's Exhibit GG) namely, the two revolver grips, the cylinder pin and the main spring all fit this revolver (State's Exhibit NN.) A witness George Stanhope, a forty-year employee of Harrington-Richardson, Inc., manufacturer of the type of this revolver (State's Exhibit NN) demonstrated in court that said parts of State's Exhibit GG fit the revolver State's Exhibit NN.

136. Said Stanhope testified that it was the Harrington-Richardson's manufacturing procedure to mark the gun number on the inside of the pistol grips and the same number on the pistol frame or gun.

137. At the trial said witness examined and showed to the Court and jury that the number 5755 was marked on the inside of both of the pistol grips (State's Exhibit GG) and that the same number was marked on the gun (State's Exhibit NN) and that it was his opinion that said grips belonged to said gun.

138. The barrel of the revolver (State's Exhibit NN) was in very poor condition and was rusty and pitted. By reason thereof, Captain Chameroy, a ballistic expert was unable to make an identification or match of the test bullets fired through this gun with the bullet taken from the head of Kurpiewski. (State's Exhibit Q).

139. The bullets taken from the head of Daniel Janowski (State's Exhibits R1 and R2) were damaged and by reason thereof Capt. Chameroy in his test was unable to determine whether or not they were fired from the gun. (State's Exhibit MM).

140. The accused Culombe at the trial testified before the jury and failed to deny his guilt. He limited his testimony to facts pertaining to his boyhood activities and mental condition to the age of seventeen.

140A. State psychiatrists examined Taborsky and found him sane, and so responsible for his act.

II.

The defendant offered evidence to prove and claimed that he had proved the following facts:

141. That Arthur Columbe at birth suffered from an injury, or defect at or near the brain.

142. That as a small boy he displayed a lack of understanding of what was reality.

143. That from the beginning in school his scholastic rating showed the lowest and necessitated placing him in special classes.

144. That as a small boy mental examination had established Culombe to be a moron and an idiot.

145. That mental tests show him at the time of the alleged to be a moron and feebleminded.

146. That mental tests show him to have a child-like mind at the time of the crime.

147. That tests show that Culombe cannot read or write and never has been able to read or write.

148. That as a boy and young man he has prior to the date of the alleged crime, been an inmate of mental institutions.

149. That he was at the time of the crime, is now, and always has been a person with a lack of understanding, lack of judgment and a person easily led by others.

150. That the tests of Culombe disclose a mental age of nine to nine and one half years. His intelligence quota is 60; normal I. Q. is 90 to 110; his age is 34 years.

151. He is feeble-minded. He acts purely under stress as to reasoning power. He is of adult age with a child's mind. His judgment is impaired.

152. That as a child he suffered considerable illness, pains in his head, and was not mentally normal.

153. That Arthur Culombe was placed under arrest at about 10:00 p.m., Saturday, February 23, 1957, and placed in a cell at the State Police Barracks.

154. That on Saturday night, February 23, 1957, while in custody of the State Police, Culombe demanded the right to consult an attorney, and on several occasions prior to making

a statement, demanded such right but he was not permitted to do so. Before giving statements as alleged, Culombe demanded the presence of State's Attorney Bill or County Detective Riordan but this was not permitted.

155. That Culombe was taken before the Superior Court and presented at a hearing before the Honorable Judge Abraham S. Bordon on the Thursday morning, February 28, 1957, following his arrest.

156. That Culombe was not provided with counsel prior to the hearing. At this hearing remanding him to the police, he was not represented by any counsel.

157. That Lt. Rome refused to allow Culombe to contact a lawyer on Saturday night when he was told he was being locked up.

158. That on Monday afternoon, February 25, 1957, Culombe was taken to New Britain to the Police Station and there charged with a crime, the nature of which he was not told.

159. That after being arraigned in the court at New Britain, where he was unable to see or hear the proceedings, Culombe was not told, in court or out, what crime he was charged with or the bond, if any, set by the court.

160. That because of treatment accorded him at the State Police Barracks, Culombe began to feel beaten and depressed, and sobbed in the presence of Sgt. Paige, with no will to resist the pressures of the police feeling that it was hopeless to resist further.

161. That at the arraignment before Judge Bordon, Culombe was in a dejected, defeated condition because of the actions of the police in blocking his attempt to obtain counsel, to contact friends and relatives, and great physical, mental and verbal abuse.

162. That the State Police on numerous occasions prior to the giving of statements, had brought Culombe's wife and young children to the police barracks where Culombe could see and hear them while he was being questioned. That the presence of Culombe's wife and children re-acted to the extent of breaking Culombe's will to resist the efforts of the police to obtain statements from him.

163. That as a result of the police treatment, Culombe was reduced to a state where he agreed to give the police a statement so that they would stop bothering his wife and young children.

164. That as a result of the treatment by the police, Culombe's power of resistance was completely gone and he gave the police any statements they desired.

165. That Culombe was held in custody by the State Police from Saturday, February 23, 1957, to Wednesday, February 27, 1957, undergoing constant questioning both night and day before he gave a statement.

166. That on Tuesday night, February 26, 1957, while undergoing questioning, Culombe had seen his wife and children at the police barracks.

167. That the effect of seeing his wife and children the night before was such that Culombe sobbed and said to State Police Sergeant Donald Paige, "How low can they get?"

168. On Tuesday night, February 26, 1957, Culombe was under a court order, removed to the county jail.

169. On Wednesday, February 27, 1957, he was wrongfully taken by the State Police from the County Jail to the State Police Barracks where the questioning was resumed and continued when statements were obtained.

170. That the statements, or confession so-called extracted from Culombe were obtained by psychological pressure and coercion, by physical and verbal abuse, and threats to himself and his family, and by being deprived of conferences or aid from friends, family or an attorney.

171. That courts of criminal jurisdiction were in session at the City of Hartford, and the City of New Britain between the times of Culombe's arrest on February 23, 1957, and the time of his so-called confession and there was ample opportunity to present Culombe before a court of proper jurisdiction and safeguard his rights, but this was not done with the exception of the Police Court of the City of New Britain on February 26, 1957, and whose order concerning custody was violated prior to obtaining of the statements from Culombe.

III.

The defendant requested the Court, in writing, to charge as follows, but the Court refused to grant such requests:

172. "If the accused's preception of the consequences and effects (of his acts) was only such as is common to children of tender years he ought to be acquitted."

173. "To be responsible for a crime, a man must have the capacity and understanding of a normal child of at least fourteen years.

174. "A killing by one who for any cause at the time the act was committed was incapable of conceiving and carrying into execution a deliberate plan to kill or was mentally incapable of intent or premeditation or who was beyond the power of self control at the time lacks the necessary elements of murder in the first degree.

175. "Murder is an unlawful killing, without legal justification, excuse or circumstances that amount to legal extenuation. Such a killing is murder in the second degree.

176. "The law humanely absolves from responsibility a man whose mental condition does not reach the legal standards of sanity and the law as clearly as it can defines this legal standard, (as follows): To be the subject of punishment an individual must have mind and capacity, reason and understanding enough to enable him to judge of the nature, character and consequence of the act charged against him, that the act is wrong and criminal and that the commission of it will justly and properly expose him to penalty.

177. A verdict of not guilty on the ground of insanity or mental incapacity will subject the accused to such restraint as to prevent his doing injury to the persons or property of others."

But the Court did charge, in part, as follows:

178. "The State must prove guilt beyond a reasonable doubt—that is, by such proof as precludes every reasonable hypothesis except that which it tends to support. It is proof wholly consistent with the defendant's guilt and inconsistent with any other rational conclusion.

This requirement of the law, that in order to convict an accused the State must satisfy you beyond a reasonable doubt of his or their guilt, does not mean that proof must be beyond a possible doubt, and a possible supposition of innocence is a far different thing from a reasonable hypothesis.

In this case, as in all such cases, the accused are presumed to be innocent until he or they are proven guilty. That means that at the moment when the accused were presented for trial here before you, nothing which you knew about his or their past or might surmise or guess about his or their past should be considered by you at all. Their slates were wiped clean at that moment. They stood before you free from guilt, bias, prejudice or burden arising from his or their position as accused. In so far as you are concerned, they were then innocent and they continue to be innocent until such time as the evidence and matters produced here in the orderly conduct of this case satisfy you that he or they are guilty. Up to the moment when you are so satisfied from what has taken place here in court before you that he or they are guilty, so far as you are concerned he or they are innocent of the crimes with which they are charged. This presumption requires that if a piece of evidence offered is capable of two reasonable constructions, one of which is consistent with innocence, it must be given that construction. If you entertain a reasonable doubt between a greater and lesser crime, the accused should have the benefit of that doubt and your verdict should be for the lesser crime.

179. "Now, if you conclude that there have been unlawful killings with no circumstances indicating excuse or justification and no circumstances indicating that they were the result of a transport or passion, then the law is that the killings were with malice. If there exists in the evidence no proof of malice, either expressed or implied, then the crimes must be manslaughter at the most. If, however, there is malice, expressed or implied, then the crime is murder; that is to say, murder in the first or second degree.

It is necessary now to explain to you the distinction between murder in the first degree and murder in the second degree. An unlawful homicide without extenuating circumstances reducing it to manslaughter, would be murder in the second

degree unless the murder falls within one of the classes designated by the statutes of our State as murder in the first degree."

180. "The definition of insanity which I have given you would include a mind which is either so naturally weak or so impaired by disease or otherwise to make its possessor incapable of distinguishing right from wrong. It would not include a mind which, while weak or incapable in some measure, is still sound enough to know right from wrong and to make the essential choice of course, is still sound enough to resist and impulse which its possessor knows will result, if yielded to, in exposing him to just and proper punishment for crime.

The return to this definition for a moment then, two or three things are suggested by it as of vital consequence for the jury to consider and carry in mind in applying it. You will be careful to remember, in the first place, that a man of merely dull or deficient intellect, or abnormal mental quality, is not necessarily irresponsible within the meaning of the law. There are degrees of mental dullness or deficiency or disturbance, and it is only when the condition of mind in any given subject brings him, with reference to the particular act involved, within the strict protection of the definition that I have given to you, that he is to be regarded as irresponsible in the eyes of the law.

It is quite important, ladies and gentlemen of the jury, that you recognize the distinction which I have suggested—so important, indeed, that I shall repeat to you once more the accepted definition of that kind or degree of insanity which absolves one so afflicted from punishment for his otherwise criminal acts. Again, then: To be the subject of punishment one must have mind and capacity, reason and understanding enough to enable him to judge of the nature, character and consequences of the act charged against him, that the act is wrong and criminal, and that the commission of it will justly and properly expose him to penalties. And he is within the law's protection if his mind is so diseased or abnormal as to render him incapable of resisting an impulse to do an otherwise criminal act."

* * *

181. "And if you find that despite what the State may have proved, that the accused do not have the mental capacity, that they are insane within the definition that I have given to you.

then, your foreman should state and you should find that they are guilty on the ground of insanity."

IV.

182. The State offered in evidence photographs of the dead bodies of the two deceased, and over the objection of the defendant, Arthur Culombe, they were admitted as full exhibits, and marked as follows:

State's Exhibit 38 dead body in toilet.

State's Exhibit 105 dead body of man in morgue.

State's Exhibit 101A dead body of man in morgue.

The defendant Culombe claimed that said photographs were gruesome and served no purpose except to inflame the jury against the defendant.

183. The State offered in evidence a photograph of a dead body of one of the decedents, and the photograph as offered by the State was ordered cut out from the whole photograph and received in evidence, being marked State's Exhibit 56.

State's Exhibit 56 was a part of a photograph which was inadmissible among other reasons because the position of the body, and the location of the same was different than as is claimed by the State to have existed at the time of the arrival of the officers, and at the time of the alleged commission of the crime by the defendant.

The defendant Culombe claimed that the cutting of the photograph and the admission of the part known as State's Exhibit 56 was an artificial, untrue portrayal to the jury of the fact, and greatly exaggerated the already existing gruesomeness of the exhibit, serving no purpose except the inflaming of the jury, and causing added prejudice against the defendant, but the Court ruled otherwise.

V.

Hearing on motion for change of venue.

See Finding of BORDON, *J.*

VI.

184. In the voir dire prespective jurors in the panel of talesmen related that they knew of the confessions, read the newspaper stories, listened to radio broadcasts and television newscasts regarding the apprehension of the defendant, of his background and his confession of guilt.

185. The defendant Culombe claimed that jurors were placed on the trial jury who had a preconceived notion of the defendant's guilt from the reading and hearing of the confession he allegedly made.

186. No juror was placed on the trial jury who had a settled prejudice or hostility to the defendant which would require evidence to remove before testimony could be heard and fairly weighed.

187. One juror, George W. Hannan, as a member of a commission of the town of East Hartford, participated in voting for a reward offered by the commission for the capture and conviction of the killers, and allegedly defendant was one.

188. After said juror had been accepted as a member of the jury a motion was made to excuse the said juror for cause, which was denied, and a motion was then made to permit the use of a preempting challenge which was denied.

189. The defendant Culombe claimed that information regarding this juror was not known to the defendant until after he was accepted on the jury.

190. Having heard the evidence in regard to the motion for a change of venue, the Court denied said motion. At the start of the trial itself, before the jury, the motion was renewed and also denied.

VII.

All exhibits received and marked in evidence in the above entitled case may be used in argument before the Supreme Court of Errors without printing.

SHANNON, *J.*

Filed February 18, 1958.

FINDING.

I.

In respect to the hearing on the defense motions for a Change of Venue which was held prior to the trial, the following facts are found.

1. Prior to the apprehension of the defendants, there had been a number of atrocious holdup killings which created fear and panic among many businessmen, particularly gas station operators, package store owners, and operators of small shops in outlying places in the State.

2. The newspapers, radio and television networks of the entire State published and broadcast these incidents and dramatized their stories by calling the defendants "mad killers" and by showing pictures of the victims and of places wherein alleged killings occurred.

3. Many witnesses testified to aroused public opinion but no credible evidence was presented that such opinion had crystallized into unwavering conclusions precluding a fair trial.

4. There was no evidence of expressed or vigorous public sentiment that such a trial could not be had in Hartford County.

5. Few of the witnesses could be regarded as competent to interpret public opinion accurately, and most of them testified that mass discussions among citizens of the county indicated opinions that a fair trial could be had within the county.

6. There was no evidence of riots, race prejudice in Hartford County, nor any evidence that mob violence, group violence or individual violence had been threatened or committed against the defendants.

7. Proof that derogatory articles were published in some of the cities of the county, and publicized throughout the county by radio and television is not proof that a fair trial could not be held within the county, or that the county as a whole was so prejudiced that a fair trial could not be had.

II.

The following conclusions have been reached:

8. A jury could be selected in Hartford County that would be fair and impartial and that the defendants would be assured of a fair trial.

9. The defendants have failed to establish the burden of proof of the claims alleged in their motion.

All exhibits are hereby made a part of the record on appeal and may be used in the Supreme Court of Errors without being printed.

BORDON, *J.*

Filed January 30, 1958.

AMENDMENT TO FINDING.

The finding is amended by striking out Paragraph 140A and substituting therefor, the following:

140A. State Psychiatrists examined Culombe and found him sane, and so responsible for his act.

The finding is further amended by adding thereto the following:

IIA.

The accused offered evidence claiming to prove he was insane on December 15, 1956 and the State then offered evidence to prove and claims to have proved the following:

1. Dr. Harold A. Bancroft, a doctor of medicine specializing in psychiatry for more than thirty years with many years of Court experience as an expert witness in criminal matters, examined Arthur Culombe on March 2, 1957.

2. Dr. Bancroft was of the opinion that Culombe was a mental defective of the grade of high moron, he knew right from wrong and was not psychotic, he had the mind, the capacity, reason and understanding of the act charged against him, he knew that the act was wrong and criminal and that the commission thereof would properly expose him to penalty, and that his mind was not so diseased or abnormal that he could not resist an impulse to commit a criminal act.

3. Dr. Bancroft was of the opinion that Culombe, a thirty-three year old man could not be classified as similar to a mental capacity age group of nine to nine and one-half years because he has increased in physical size, has had many years experience in the world, has come in contact with many things as a man, has been married, living with his wife, working, supporting his children and paying his bills.

4. Culombe is not easily led except by perhaps intimidation. He is not a fearful man but is more suggestible than a person of average intelligence.

5. Dr. Chester A. Waterman, a psychiatrist who had eighteen years experience in the New York State Hospital Service and seventeen years in the Connecticut State Hospital Service and has practiced neuro-psychiatry for many years, examined Culombe on March 2, 1957.

6. At the examination Culombe was cooperative but rather indifferent. His stream of thought showed no disturbance, his replies were coherent and well constructed.

7. Dr. Waterman was of the opinion that Culombe is a high moron, had a thorough appreciation of the act committed in this case, he knew it was wrong and would subject him to a penalty and that his mind was not so diseased or so defective as to render him incapable of resisting an impulse to do an otherwise criminal act.

8. Dr. Robert C. Doherty, psychiatrist, a witness for the accused Culombe, testified that in his opinion Culombe was not psychotic nor insane.

II-B.

During the trial, the Court heard evidence concerning the admissibility of certain alleged admissions and confessions made by the accused. In respect thereto the following facts were found:

1. During the investigation of the deaths of Kurpiewski and Janowski, State Police Officers Moran and Griffin, on February 23, 1957, at about 2:10 p.m. observed Taborsky and Culombe leaving the home of Taborsky's mother on Park Terrace, Hartford. The officers approached them just as they were entering a parked car in front of the Taborsky home when Officer

Moran told Taborsky that Lt. Rome wanted to talk to him at State Police Headquarters. Taborsky stated he was willing to go.

2. Taborsky, with Culombe driving, followed the officers' car to State Police Headquarters on Washington Street, Hartford, where Culombe stopped the car. Taborsky left the car and walked into Headquarters with the police while Culombe drove off.

3. At about 2:30 o'clock the same afternoon Sgt. Paige and Officer Reimer of the State Police went to Culombe's home at 20 Coleman Drive, Hartford, to bring him back to the State Police Barracks. His wife reported he was in the toilet and during a five minute wait the officers could hear the sound of metallic noises coming from the toilet.

4. Culombe was then taken to State Police Headquarters where Lt. Rome talked to both Taborsky and Culombe. Both agreed to accompany officers to different places for purposes of identification.

5. Taborsky and Culombe then accompanied Sgt. Paige and two other officers to the Towns of Coventry and Rocky Hill. They had supper then returned to the State Police Barracks.

6. Upon return to the barracks Culombe told Sgt. Paige he was a gun collector and he had seven or eight guns at his house which he agreed to turn over to the police.

7. Sgt. Paige and Officer Carlberg went with Culombe to his home.

8. Culombe left the officers in the living room, went to the toilet, then to a bedroom where the officers found him with two guns, a .25 and a .38. They found a .25 clip of cartridges with bullets in the drawer he had first closed. In a small safe they found six guns and three boxes of ammunition. (State Exhibits X, Y).

9. Thereupon Culombe was returned to the barracks and Sgt. Paige talked to Culombe for a short while, then discontinued the investigation. Lt. Rome talked with Culombe about two hours that evening then Culombe was locked up for the night at the barracks.

10. During the investigation Culombe was questioned about the New Britain affair of December 15, as well as other matters.

11. Lt. Rome placed Culombe in custody at 10:00 o'clock Saturday evening, February 23rd.

12. The next day, Sunday, Culombe was questioned for a short time about the New Britain shootings and denied he was involved.

13. Monday, February 25th, Culombe told Lt. Rome he wanted a lawyer but refused to give the name of any specific lawyer. Lt. Rome told him he could have a lawyer if he would tell him whom he wanted him to call.

14. On said Monday afternoon, Culombe was taken to New Britain and booked for Breach of Peace at New Britain Police Headquarters.

15. On Tuesday morning, February 26th, he was presented in the New Britain Police Court.

16. The case was continued one week by the Court and Culombe was committed to Jail under $25,000.00 bail awaiting trial. (Culombe's Ex. 6).

17. On Wednesday, February 27, at about 1:00 p.m. Sgt. Paige and Detective Murphy had a conference with Culombe at State Police Headquarters concerning the New Britain affair and other matters.

18. In the course of the conference Sgt. Paige requested Culombe's assistance in cleaning up this case, whereupon Culombe admitted "they were looking for four guns, two of which would be under water and were looking for two men and that he himself had not done any killing."

19. Culombe then agreed to show the officers where the guns were.

20. Culombe then left headquarters with Lt. Rome, Sgt. Paige, Detective Murphy and Detective O'Brien and drove to Culombe's home in a police car.

21. En route, Culombe made a statement which Detective O'Brien took down in shorthand. In the statement Culombe stat-

ed that he and Taborsky had driven to New Britain, that the streets were icy and some trees were down. They passed a gas station and Taborsky instructed him to go in, and he drove in and stopped at the gas pumps and when the attendant came out he, Culombe instructed the attendant to fill the tank. It only took about five or seven gallons to fill it. While the attendant was doing that Taborsky asked if there was a men's room and he was told there was. He went inside the station. After the gas tank was filled Culombe paid the attendant with a two dollar bill. When the attendant went into the gas station Taborsky pushed him into a room which he thought was an engine room or a boiler room and he heard a shot. Taborsky came back out into the office of the gas station and about that time a customer drove into the gas station and stopped at the pumps. As Culombe was about to service this car Taborsky emerged from the station and said to the customer, "Hey, your buddy wants to see you inside." He put the gun on him and ordered him into the station and into the men's room. Culombe heard two shots. Shortly after Taborsky came out and they left. He was asked by Lt. Rome how much money they realized, and he said that it was about $133.00.

22. When the police and Culombe arrived at Culombe's home Lt. Rome, followed Culombe's instructions, removed a medicine chest from the wall in the bathroom and back of the medicine chest between the walls he found a leather brief case containing a gun and two blackjacks.

23. Shortly thereafter Culombe opened the safe in the bedroom and Lt. Rome found a metal box with some parts of a gun.

24. At Culombe's direction the officers with Culombe drove to Dexter Avenue and Reed Avenue to another swampy area. Culombe told the officers they would find a raincoat in the swamp with the number 16594 in the collar. Detective Murphy found the raincoat and took it out of the water. Culombe identified it as his coat and said it was worn by Taborsky on the night they went to New Britain.

25. The raincoat (St. Ex. FF) had blood stains of human origin present on the right sleeve and left lapel.

26. Culombe while in the living room with his wife, young daughter and Detective Murphy, told his wife that he had decided to cleanse his conscious and make a clean breast of things

and that he had told the police a true story. He also said that he might get life but that Taborsky would get the chair and that he didn't want to cause her any further embarrassment. He further told his wife that he was afraid for her, he was afraid Taborsky might attempt to do her harm which was another reason for cooperating with the police.

27. Upon Culombe's direction the officers and Culombe drove to the intersection of Newfield Avenue and Dexter Avenue in Hartford where Culombe said he would show where some guns were located. When they arrived there Culombe pointed out a pond where they would find two guns and that the parts of the gun found in the metal box would fit one of the guns.

28. Culombe directed the officers to a brook which runs under Chandler Street where he stated he discarded some wallets in some brush in that area. A search was made but the wallets were not found.

29. Culombe directed the officers to Bordon's Service Station in Hartford where he pointed out a 1949 black Oldsmobile which he stated he previously owned and was used the night they had gone to New Britain.

30. Culombe and the officers returned to State Police Headquarters about 6:10 p.m. where, in the presence of Commissioner Kelly and Major Remer, Culombe admitted he had participated in the New Britain crime.

31. After supper, around 8:00 o'clock with Lt. Rome, Detective O'Brien, County Detective Matus and Sgt. Paige, Culombe signed a written statement in which he described the holdup and killings in New Britain on December 15, 1956, and another incident. (State Ex. X1 for Ident.).

32. Later Lt. Rome caused to be drawn another statement which was confined solely to the New Britain incident and read substantially the same as the New Britain incident described in the February 27th statement signed by Culombe. (State Ex. Z).

33. On March 3rd at the County Jail, Lt. Rome, in the presence of Detective O'Brien read to Culombe his signed statement of February 27th of the New Britain incident only (St. Ex. Z1 for Ident.), then read the new statement (St. Ex. Z) and

explained to him the purpose of the new statement was to confine the statement to the New Britain incident alone. Thereupon Culombe signed the statement. (State's Ex. Z).

34. Culombe saw his wife at their house the evening of February 23, and at least on two occasions at the State Police Barracks before the confession (St. Ex. Z1 for Ident.) was made. Culombe made no request of her to obtain a lawyer.

35. The verbal confession and the written confession of Culombe (State's Ex. Z) were made voluntarily and without force, compulsion, fear or promise.

36. Thursday morning, February 28th, Culombe was served with a bench warrant issued by the Superior Court and was presented that morning before Honorable Abraham S. Bordon, Judge. (St. Ex. BB for Ident.).

37. Upon inquiry by the Court, Culombe said he wanted a lawyer but refused to accept the Public Defender. Culombe stated he would like Attorney McDonough but was unable to pay for his services. The Court then informed Culombe that the Court would see that he had an attorney of his own choosing even though it may be necessary for the state to pay for his services. He informed Culombe that the police wished to conduct an investigation into the charges against him and that Culombe had the right if he wished to say nothing or may, if he wished, cooperate with the police. Culombe stated he was willing to cooperate with the police and he would do so voluntarily. Thereupon the Court ordered Culombe released to Commissioner Kelly for the purpose of continuing the investigation. (St. Ex. BB for Ident.).

38. After court Culombe voluntarily accompanied Lt. Rome and other officers to said Kurp's Gas Station in New Britain where he re-enacted his activities at the gas station on December 15.

39. At Culombe's request on said February 28th he remained at the State Police Barracks rather than at the jail.

40. On Saturday evening, March 2, 1957, State Policeman John Fersch was assigned to guard Culombe in his cell at the State Police Barracks.

41. At about 10:00 p.m. while the officer was sitting in a chair outside the cell reading a book, Culombe called to him and said he wished to volunteer some information relative to the events that occurred at Kurpi's Gas Station in New Britain on the night of December 15, 1956.

42. Culombe then told the officers substantially the same story contained in his confession (St. Ex. Z for Ident.), except that it was he (Culombe) who followed the attendant (Kurpiewski) into the gas station and after he got in there, he put his gun on the attendant and forced him into the boiler room where he shot him. After shooting him he turned the body over and took his wallet from the attendant's back pocket.

43. The next day, Sunday, March 3rd, Lt. Rome and Officers Moran and Fersch met with Culombe at State Police Headquarters and in answer to Lt. Rome, Culombe said he wished to change his previous statement of February 27th. (St. Ex. Z for Ident.).

44. He then made a written statement wherein he stated that on the evening of December 15th at the gas station after the attendant filled up the tank he (Culombe) told him he was going to the men's room and walked inside the station. The attendant followed him in and just as soon as he got in the door he put his gun on him. He did not put up his hands, but when he told him to go into the boiler room, he did, and Culombe followed after him still pointing the gun at him. He told him to get into the right corner of the room but he did not seem to want to do what he told him, so Culombe pushed him with his left hand. He hit the wall with his back, then he seemed to come at Culombe and then Culombe pushed him again and the gun went off. He thought the bullet hit him in the head but was not sure. He dropped to the floor in a sitting position and Culombe lifted his body and took a wallet from his rear pocket. He then left the boiler room to search for money.

45. The verbal confession to Officer Fersch and the written confession of Culombe (St. Ex. EE for Ident.) were made voluntarily and without force, compusion, fear or promise.

46. The written statement of Culombe made on March 3rd wherein State's Exhibit Z was submitted for State's Exhibit Z1 for Identification in order to confine the statement to the New

Britain incident alone, was signed voluntarily by Culombe and without force, compulsion, fear or promise.

47. Mrs. Culombe, wife of the accused Culombe, visited Culombe at State Police Headquarters on two or three occasions between February 23rd and February 27th. She made these visits voluntarily and under no compulsion by the police. Mrs. Murtha a State policewoman, accompanied Mrs. Culombe at all times and treated her very fairly.

48. On these visits Mrs. Culombe took the children with her because she did not want to leave them at home alone.

49. The police at no time, either in or out of the presence of Culombe, mistreated Mrs. Culombe or her children either by word or action.

50. Nothing was said or done by the police to Mrs. Culombe or the children to cause anxiety on the part of Culombe or to reduce his resistance or will power, or to influence him to confess.

SHANNON, *J.*

Filed March 10, 1958.

ASSIGNMENT OF ERRORS.

A.

ERRORS APPARENT ON THE FACE OF THE RECORD.

The Court erred:

1. In denying the motions made by the defendant, Arthur Culombe, for a change of venue where the evidence disclosed a vast amount of publicity by newspapers, radio and television, which created in prospective jurors a deep-seated hostility toward the said defendant, making it impossible for him to obtain a trial by a fair and impartial jury, in violation of his constitutional rights and privileges (U. S. Constitution, Articles V, VI, XIV, Sec. 1, of the Amendments; Conn. Constitution, Article I, Sec. 9).

2. In denying a motion made by the defendant, Arthur Culombe, to dismiss the criminal action against him because of the State's failure to produce the evidence of two witnesses or evidence equivalent to that of two witnesses.

3. In denying a motion to set aside the verdict of the jury as contrary to and inconsistent with the evidence produced.

4. In denying a motion to dismiss the action against the defendant, Arthur Culombe, where the only evidence implicating the defendant, Culombe, was his own admissions and confession.

5. In permitting the introduction of Taborsky's confession and other statements made by Taborsky which were prejudicial to the cause of Culombe, notwithstanding the Court's request that the jury disregard same as to Culombe.

6. In refusing to excuse the juror, George W. Hannon, who participated as a member of a public authority in voting for a reward for the capture and conviction of the persons responsible for the killing in East Hartford, when it was shown that the defendant, Culombe, was charged with such killing and newspapers had reported a confession by him.

7. In failing to furnish counsel to Culombe at his arraignment prior to any proceedings which resulted in his being remanded to police custody in violation of his constitutional rights and privileges, as hereinafter set forth.

8. In remanding Culombe to the custody of police and in holding a hearing thereon without furnishing him with counsel, as he had requested, in violation of his constitutional rights and privileges, as hereinafter set forth.

9. In not granting the motion to set aside the verdict where there was no proof of a robbery as having been committed, as set forth in the indictment during which the killings of the victims allegedly occurred.

10. In permitting the introduction into evidence of the alleged confessions of Culombe after it was shown that the same was obtained by coercion and duress of a psychological nature.

B.

ERRORS IN THE HEARING ON DEFENSE MOTIONS FOR A CHANGE OF VENUE.

The Court erred:

1. In refusing to find the material facts set forth in Part V, Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of

the defendant Arthur Culombe's Draft Finding which were undisputed or admitted.

2. In finding facts set forth in Part I, Paragraphs 3, 4, 5 and 7 of the Finding without proper basis in evidence produced.

3. In reaching the conclusions stated in Part II, Paragraphs 8 and 9 of the Finding when the facts set forth in the Finding and the testimony of prospective jurors in the course of the voir dire do not support them.

C.

ERRORS IN THE CONDUCT OF THE TRIAL.

The Court erred:

1. In denying the defendant, Arthur Culombe's motion to set aside the verdict of the jury where the same was contrary to and inconsistent with the evidence produced.

2. In permitting the introduction into evidence of the alleged confessions of the defendant, Arthur Culombe, after it was shown the same were obtained by coercion and duress of a psychological nature and in violation of his Constitutional rights and privileges (U.S. Constitution, Articles V and XIV, Sec. 1, of the Amendments).

3. In admitting into evidence those portions of the confession of the co-defendant, Taborsky, which implicated the defendant, Arthur Culombe, notwithstanding the Court's instruction to the jury to disregard this matter as to the defendant, Culombe.

4. In refusing to grant a motion to dismiss, made by the defendant, Arthur Culombe, because of the State's failure to produce the evidence of two witnesses or evidence equivalent of two witnesses.

5. In refusing to excuse jurors who stated on the examination that they had a pre-conceived notion of the guilt of the defendant, Arthur Culombe, in violation of his lawful and constitutional rights and privileges (U. S. Constitution, Articles VI, XIV, Sec. 1, of the Amendments; Connecticut Constitution, Article I, Sec. 9).

6. In refusing to excuse the juror, George W. Hannon, who participated, as a member of a public authority, in voting for a reward for the capture and conviction of the persons responsible for a killing in East Hartford, when it was shown that the defendant, Culombe, was charged with such killing and newspapers had reported a confession by him.

7. In not furnishing counsel to Culombe at his arraignment prior to any proceedings which resulted in his being remanded to police custody in violation of his constitutional rights and privileges (U. S. Constitution, Articles VI, XIV, Sec. 1, of the Amendments.)

8. In remanding Culombe to the custody of police, and in holding a hearing thereon without first furnishing him with counsel, as he had requested, in violation of his constitutional rights and privileges (U. S. Constitution, Articles VI, XIV, Sec. 1, of the Amendments).

9. In refusing to grant a motion to set aside the verdict where there was no proof of a robbery as having been committed, as set forth in the indictment, during which the killings of the victims allegedly occurred.

10. In refusing to charge the jury, as requested in Part III, Paragraphs 172, 173, 174, 175 and 177 of the Finding.

11. In refusing to find the material facts as set forth in Paragraphs 23, 26, 27, 32, 33, 34, 35, 36, 37, 38, 39 and 40 of Part First of the Draft Finding of the defendant Culombe.

12. In charging the jury, as appears in Part III, Paragraph 180 of the Finding, more particularly in regard to the McNaghten and Irresistible Impulse Tests of criminal responsibility which Tests are contrary to present medical, scientific and psychological insight and knowledge, and are vague, illogical, unreasonable and obsolete.

13. In overruling the claims of law, as stated in Part IV, Paragraphs 182 and 183 of the Finding.

14. In failing or refusing to reach the conclusion that the alleged confessions were obtained by coercion, under compulsion and duress of a psychological nature, and were not made voluntarily, but obtained and made in violation of his constitutional

rights and privileges (U. S. Constitution, Article XIV, Sec. 1, of the Amendments).

15. In reaching the conclusion that the verbal confessions and the written confessions of Culombe were made voluntarily and without force, compulsion, fear or promise, as set forth in Part IIB, Paragraphs 35, 45 and 46 of the amended Finding.

16. In finding the facts set forth in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 of Part IIA of the amended Finding, without a sufficient basis in evidence.

17. In finding the facts set forth in Paragraphs 33, 34, 35, 36, 41, 49, 50, 51, 52, 53, 54, 55, 57, 64, 65, 76, 77, 84, 93, 97, 101, 104, 105, 106, 108, 109, 110, 111, 112, 113, 114, 117, 120, 122, 123, 124, 125, 140 and 140A of the Finding without a proper or sufficient basis in law and evidence.

18. In finding the facts set forth in Paragraphs 2, 3, 4, 5, 6, 13, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50 of Part IIB of the amended Finding.

19. In charging the jury as follows:

"You have heard the testimony of the doctors, whom I may call the expert witnesses, given upon the result of personal examination. As to their personal examination, they examined the defendants both physically and mentally. The opinion of persons learned in medicine, having expert skill, based upon a personal physical examination, is worthy of your consideration. As I understand the testimony of the doctors in this case, their opinions were based not merely upon a physical examination and records which you have before you, but also upon mental examinations, largely upon the answers to questions given by the accused themselves. As a result of these examinations, the doctors offered here have judged the accused as they have testified.

"It is but right for me to remind you that you should consider the base of that opinion, and if you find that they base it wholly or partially upon statements made to them by the accused, you should then consider whether the statements from the accused were to be believed or not. You are to remember that the accused were not upon oath when they made these

statements to these doctors; that they were about to be put on trial for their lives; that they were vitally interested in the outcome of these cases, and that interest you ought to take into consideration in deciding what credit you may give to the statements of the accused; that is, to decide whether these doctors received from these accused or from the accused with whom they talked, correct and true statements of fact. If they did, if the facts stated to them were true, then you might consider their opinion as of value. If you come to the conclusion that the answers were made in view of the trial, that you ought not to believe them—that you give them little weight, then you might consider that the opinion of the doctors, based upon such information, was of no great value. That is a matter I wish to ask you should carefully consider when dealing with the opinions of the experts. And you are to remember that these experts are not deciding this question for you. They are merely giving an opinion to you to help you to decide, for it is a question which you must decide and not they. It is for you to determine what weight, if any, you will give to their testimony." (Charge to the jury, pp. 33-34).

Respectfully submitted,

Defendant, ARTHUR CULOMBE,

By ALEXANDER A. GOLDFARB,
His Attorney and
Special Public Defender.

Filed September 27, 1958.

No changes or additions.

BORDON, *J.*

Corrections refused 10/6/58.

SHANNON, *J.*

SUPREME COURT OF ERRORS, HARTFORD COUNTY. } *Clerk's Office.*

The above and foregoing is a true copy of the record in said case to be used in the trial in the Supreme Court of Errors.

Attest. RAYMOND G. CALNEN,
Clerk.

55 In the Supreme Court of Errors of the State of Connecticut

STATE OF CONNECTICUT
v.
JOSEPH L. TABORSKY

STATE OF CONNECTICUT
v.
ARTHUR CULOMBE

BALDWIN, C.J., KING, MURPHY, MELLITZ and SHEA, Js.

Each of the defendants confessed to participation in the holdup of a gasoline station and the slaying of the proprietor and a customer. The jury were adequately instructed that each confession was to be considered only in the case against the defendant who had made it. In each confession, most of the material facts were the same as in the other, and
56 each confession, if legally corroborated, was sufficient to convict the one making it of first degree murder. The evidence introduced at the joint trial disclosed no facts incriminating either defendant which would not have been before the jury had he been tried separately and only his own confession admitted. *Held* that there was no abuse of discretion by the trial court in denying the defendant T's motion for a separate trial.

The basis of the defendants' motions for a change of venue was the nature of the publicity given the series of holdup killings which preceded the apprehension of the defendants. While there was evidence that the public were aroused against the defendants after they confessed, the court could conclude, as it did, that the defendants failed to prove that a fair trial could not be had in the county where the crimes were committed. The court did not abuse its discretion in denying a change of venue.

An accused is entitled to counsel to aid him in his defense, not to prevent voluntary action on his part. A denial of counsel for any part of the pretrial proceedings may violate

due process if the accused is prejudiced thereby. Where the accused claims that he was illegally deprived of counsel between his arrest and arraignment, the question is whether there was an unreasonable delay in his obtaining counsel and whether, as a result, the opportunity for a fair trial was denied him. In the present instance, it did not appear that counsel were denied the defendants or that any failure to furnish them with counsel before they were first brought before the Superior Court on a bench warrant charging murder denied them the opportunity for a fair trial.

A confession is not admissible in evidence unless it is voluntary. The question whether it is voluntary is one of fact to be determined by the trial court in the exercise of a legal discretion, usually after a preliminary hearing in the absence of the jury. The claim of the defendant C that the police had used his wife and children to force a confession from him and the claims of both defendants that they were being illegally detained when their confessions were made were not substantiated. Furthermore, since neither defendant thought his detention to be illegal, no irregularity in the detention could have contributed to the inducement of the confessions. The court did not abuse its discretion in admitting the confessions in evidence.

If the testimony of one or more witnesses is sufficient to establish some of the essential facts of the capital crime, and that of another witness or other witnesses is sufficient to establish the remaining essential facts, the two-witness statute (§ 54–83) is satisfied. It was satisfied here. Apart from the confession of either defendant, there was ample evi-
57 dence that the capital crimes charged had been committed. There was, as well, evidence corroborating the essential details of the confessions.

Upon the evidence, the jury could find that each defendant had the requisite capacity to commit the crimes and was guilty beyond a reasonable doubt.

Since the court could find upon the voir dire that certain veniremen, who admitted having opinions on the guilt of the defendants because of the publicity given the crimes, would disregard those opinions and decide the cases upon the evi-

dence, the refusal of the court to excuse the veniremen for cause could not be disturbed. Nor was it an abuse of discretion to refuse to excuse a venireman who had participated as a town official in the offer of a reward for the apprehension of the perpetrators of another holdup killing with which the defendants' names were connected.

It was not error to charge that in weighing the opinions of the experts on the defendants' capacity to commit the crimes, the jury were to take into consideration the fact that those opinions might be based, in part at least, on unsworn statements made to the experts by the defendants themselves.

The court did not abuse its discretion in admitting as an exhibit a photograph of one of the victims as he lay dead on a stretcher.

Argued January 8—decided February 16, 1960

Indictments charging the defendants with murders in the first degree, committed in the perpetration of robberies, brought to the Superior Court in Hartford County and tried to the jury before Shannon, J.; verdicts and judgments of guilty and appeal by the defendants. No error.

Wallace R. Burke, special public defender, with whom were John J. Daly, assistant to the special public defender, and Maxwell Heiman, for the appellant (defendant) in the first case.

Alexander A. Goldfarb, special public defender, for the appellant (defendent) in the second case.

John D. LaBelle, state's attorney, for the appellee
58 (state) in each case; with him, on the brief in the second case, were J. Read Murphy and George D. Stoughton, assistant state's attorneys.

Opinion

February 16, 1960

BALDWIN, C.J. The defendants, Joseph L. Taborsky and Arthur Culombe, were convicted of murder in the first degree in a joint trial to a jury in the Superior Court. They were indicted under what is now § 53-9 of the General Statutes for

the killing of Edward J. Kurpiewski and Daniel J. Janowski, committed during a holdup at a gasoline station in New Britain on December 15, 1956. The defendants, in their appeals, have assigned error in the rulings of the court preliminary to the trial, in the admission of their confessions and other evidence during the trial, in the charge, and in the denial of their motions to set aside the verdicts of guilty.

On December 15, 1956, the bodies of Edward J. Kurpiewski and Daniel J. Janowski were found in Kurp's gasoline station on Stanley Street in New Britain. An autopsy revealed that both had died from bullet wounds in the head. In the afternoon of February 23, 1957, the defendants were taken into custody by the state police. Culombe, on February 27, and Taborsky, on March 1, confessed to robberies at the gasoline station and to the two homicides. Each confession corroborated the other in the main. A general summary of the facts contained in them follows: About 6 p.m. on Saturday, December 15, 1956, the defendants drove in Culombe's Oldsmobile from Hartford to New Britain. They were armed and they intended to hold up a gasoline station. They stopped at Kurp's station. The proprietor, Kurpiewski, serviced their car. Taborsky left the car to go, as he said, to the toilet in the station. After Culombe had paid for the gasoline, he
59 ordered Kurpiewski, at gun point, in to the boiler room of the station, shot him, and took his wallet. Meanwhile, Taborsky was searching the main office of the station for money. Culombe joined him and they found and took money from the cash register and the desk. During this search Janowski, who had his eighteen-month-old daughter with him, drove up and stopped by the pumps. Taborsky and Culombe waited in the station, but when Janowski did not drive away they came out. Culombe pretended to service Janowski's car. Taborsky pointed a gun at Janowski, took his wallet and ordered him into the station and then into the toilet room, where Taborsky shot him twice in the left side of the head above the ear. Taborsky and Culombe then drove to Culombe's house in Hartford and divided the money. Taborsky returned later that evening to his home in Brooklyn, New York.

Before the trial began, Taborsky filed a motion for a separate trial which the court denied. This action is assigned as error. Taborsky claimed that the defense to be offered by Culombe would be antagonistic to his defense and that Culombe's confession, if admitted in evidence, would be prejudicial to him. Whether separate trials should be allowed rests in the sound discretion of the trial court. State v. McCarthy, 133 Conn. 171, 174, 49 A. 2d 594; State v. Luria, 100 Conn. 207, 209, 123 A. 378; State v. Klein, 97 Conn. 321, 323, 116 A. 596; State v. Castelli, 92 Conn. 58, 62, 101 A. 476; State v. Brauneis, 84 Conn. 222, 226, 79 A. 70. In each confession, most of the material facts were substantially the same as in the other. See People v. Doran, 246 N.Y. 409, 425, 159 N.E. 379; People v. Fisher, 340 Ill. 216, 227, 172 N.E. 743; State v. Rios, 17 N.J. 572, 585, 112 A. 2d 247; Kirkendoll v. State, 198 Tenn. 497,
60 522, 281 S.W. 2d 243; Opper v. United States, 348 U.S. 84, 95, 75 S. Ct. 158, 99 L. Ed. 101. Each confession, if legally corroborated, was sufficient to convict the defendant making it of murder in the first degree. An examination of all the testimony in the joint appendix to the briefs discloses no material fact incriminating either of the defendants which would not have been before the jury if he had been tried separately and only his own confession admitted. See State v. Castelli, supra, 64. The court was meticulous in cautioning the jury many times during the trial, especially when the counsel for either Taborsky or Culombe made objection, that each confession was to be considered by the jury only in the state's case against the defendant who had made it. See State v. McCarthy, supra, 175; State v. Castelli, supra, 63. This caution was repeated in the charge to the jury. Upon the whole record, it does not appear that any injustice was done to Taborsky by the denial of his motion for a separate trial.

Both defendants moved for a change of venue. General Statutes § 54–78. Prior to their apprehension by the police, there had been a series of holdup killings which had practicularly aroused the fears of the operators of gasoline stations, package stores and small shops. Newspapers and radio and television networks throughout the state published and broadcast news of these crimes and referred to those perpetrating

them as "mad killers." The court conducted a lengthy hearing on this feature of the cases. Editors of newspapers, radio broadcasters and many others testified, and a number of newspaper files were received as exhibits. While some of the witnesses stated that the public were aroused against the defendants after they had confessed, by far the greater number
61 testified to facts from which a conclusion could reasonably be drawn that a fair trial could be had in Hartford County. The court concluded that the defendants had failed to sustain the burden of proving, as the law requires them to do, that a fair and impartial trial could not be had in Hartford County. State v. Chapman, 103 Conn. 453, 470, 130 A. 899; State v. Rocco, 109 Conn. 571, 572, 145 A. 47; State v. Rogers, 143 Conn. 167, 172, 120 A. 2d 409, cert. denied, 351 U.S. 952, 76 S. Ct. 850, 100 L. Ed. 1476; 4 Wharton, Criminal Law and Procedure, p. 114. The court did not abuse its discretion in denying the motions for a change of venue.

The defendants claim that they were denied counsel in violation of the fourteenth amendment to the federal constitution and article first, § 9, of the constitution of this state. They were taken into custody by the state police on Saturday afternoon, February 23. On February 25, they were taken by the state police to police headquarters in New Britain, where they were booked for breach of the peace. They were presented in the Police Court in New Britain on February 26, when their cases were continued until March 5 without plea. On February 28, bench warrants having been served upon them charging them with murder in the first degree, they were presented in the Superior Court in Hartford. The court ordered them placed in the custody of the state police for further investigation. Before this was done, however, the defendants were asked whether they had counsel. It appearing that they did not and that they were without funds to provide any, the court offered to assign counsel to them. Taborsky stated that he did not want the public defender. He asked for Attorney Nathaniel Bergman or, if he was not available, Attorney Wallace R. Burke. Bergman not being able to undertake the case, Burke
62 was assigned as counsel. Culombe also refused the services of the public defender and asked that Attorney

Thomas McDonough be appointed to defend him. The court appointed McDonough.[1] Provision is made by law for the appointment by the judges of a public defender to act in behalf of accused persons who are unable to provide counsel for themselves. General Statutes § 54-80; State v. Reid, 146 Conn. 227, 234, 149 A. 2d 698. Nevertheless, each of these defendants was provided with counsel of his own choice who acted as a special public defender at the expense of the state. § 54-81. Although an accused who cannot provide counsel for himself is entitled to competent representation, there is nothing in our law which requires that he be given a choice of counsel.

The finding made by the court concerning the admissibility of Taborsky's confession shows that Taborsky did not ask for an attorney until he was presented in the Superior Court on February 28. The finding made in the Culombe case concerning the admissibility of his confession shows that Culombe, almost from the time of his first contact with the police concerning the New Britain murders, had abundant opportunity to call an attorney; for example, the police offered to call any attorney whom Culombe would name, but he named none; he was taken to his house by the police and there talked with his wife; she also saw him at state police headquarters. Taborsky claims that he should have been provided with counsel in time for the counsel to represent him at his presentation in the Superior Court on February 28. Culombe appears to assume that immediately upon his apprehension he should
63 have been offered counsel by the state. His appearance for booking at the police headquarters in New Britain was not a hearing, and for it he did not require counsel. His presentation in the Police Court in New Britain without counsel, when his case was continued, in no way jeopardized his rights. He was not required to, nor did he, enter any plea, nor was he called upon to do or say anything. See State v. Reid, supra, 235. The "refusal of a request to engage counsel violates due process not only if the accused is deprived of counsel at trial on the merits, Chandler v. Fretag [348 U.S. 3, 9, 75 S. Ct. 1, 99 L. Ed. 4] but also if he is deprived of counsel for any

[1] After the trial and during the pendency of the appeal, McDonough died. Alexander A. Goldfarb was appointed special public defender in his place.

part of the pretrial proceedings, provided that he is so prejudiced thereby as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice.' Lisenba v. California, 314 U.S. 219, 236 [62 S. Ct. 280, 86 L. Ed. 166] (1941). Cf. Moore v. Michigan, 355 U.S. 155, 160 [78 S. Ct. 191, 2 L. Ed. 2d 167] (1957). The latter determination necessarily depends upon all the circumstances of the case." Crooker v. California, 357 U.S. 433, 439, 78 S. Ct. 1287, 2 L. Ed. 2d 1448; see annot. at 2 L. Ed. 2d 1644, 1646.

The claim that the defendants were deprived of counsel while they were held in custody for questioning has a direct bearing upon the admissibility of their confessions, a matter which will be discussed hereinafter. General Statutes § 6-49 provides for an arrest without warrant when the police have reasonable grounds to believe that a felony has been committed. Law enforcement problems vary widely in the several states, and state enforcement is accorded some latitude when an alleged violation of the due process clause of
64 the federal constitution is under consideration. Cicenia v. Lagay, 357 U.S. 504, 510, 78 S. Ct. 1297, 2 L. Ed. 2d 1523. In the course of their investigation of the series of robberies and homicides in the locality of Hartford, the police had reasonable grounds for believing that these defendants were implicated in a felony or felonies and for apprehending and holding them in custody. Under the law, an accused is entitled to counsel to aid him in his defense, not to prevent voluntary action on his part. State v. Bunk, 4 N.J., 461, 470, 73 A. 2d 249. The question is whether, during the investigation and questioning of a person suspected, there was an unreasonable delay in his obtaining counsel or whether he was forced to plea without the benefit of professional legal advice and whether, as a result, the opportunity for a fair trial was denied him. Once legal counsel is obtained; any illegality in the prior proceedings can be raised and the accused's rights fully protected. In the instant cases, the counsel who were furnished to these defendants pressed with ability and vigor, not only to the court on the preliminary hearing on the admissibility of the defendants' confessions, but also to

the jury on the trial, alleged illegality in the failure to provide counsel as well as in the methods by which the confessions were obtained. Upon the records, we conclude that the defendants were not unlawfully denied counsel.

The defendants assign error in the admission of their confessions in evidence. Taborsky claims that as to him the confession of Culombe was hearsay. The court so treated it and cautioned the jury time and again that they were to consider Culombe's statements only in connection with the charge against him. This phase of the admission of Culombe's confession was discussed when we were considering Taborsky's motion for a separate trial and
65 requires no further elaboration. The defendants claim that the confessions were not voluntary but were secured by duress, threats and psychological pressure. Before the confessions were admitted in evidence, the court, in the absence of the jury, conducted a preliminary hearing which consumed five full court days. Police officers, jail guards, and the jail physician concerned with the defendants' questioning and custody were examined at length. The defendants themselves took the stand, as did Culombe's wife. The following facts were properly found by the court: State police officers Frederick Moran and Eugene Griffin, on Saturday, February 23, 1957, at 2:10 p.m., saw the defendants leaving the home of Taborsky's mother on Park Terrace in Hartford to enter Culombe's car. The officers asked Taborsky to accompany them to state police headquarters to talk with Lieutenant Samuel Rome. Taborsky got into Culombe's car and was driven to headquarters. He went in and Culombe drove off. Detective Sergeant Donald Paige and Officer Robert Reimer went to Culombe's home at 20 Coleman Drive in Hartford. On their arrival, Culombe's wife said that he was in the toilet. While waiting, the officers heard metallic sounds coming from that direction. They took Culombe to police headquarters. There, both defendants agreed to accompany the officers. For purposes of identification, they were taken to a store in Coventry and to a package store in Rocky Hill. After they had supper, they returned with the

police to headquarters. Lieutenant Rome questioned Taborsky for some time and then locked him in a cell.

Culombe told Sergeant Paige, one of the officers who had accompanied him on the trip, that he was a gun collector
66 and that he had seven or eight guns which he would turn over to the police. Sergeant Paige then took Culombe to the latter's house. Culombe went to the toilet and then to his bedroom, where the officers found him with two guns, one of .25 caliber and the other of .38 caliber. They also found a clip of .25 caliber cartridges and, in a small safe, six guns and three boxes of ammunition. Back at police headquarters, Culombe was questioned further by Lieutenant Rome and Sergeant Paige and then placed in a cell for the night. The questioning covered the New Britain crimes and others under investigation. On Sunday, February 24, both Taborsky and Culombe were questioned again. On Monday, February 25, Culombe told Lieutenant Rome that he wanted a lawyer but refused to name a particular one. Rome told him that he could have a lawyer if he would say which one he wanted called. On the same day, both defendants were booked at New Britain police headquarters on charges of breach of the peace and held for their appearance in the Police Court the next day. On Tuesday, February 26, they were presented in that court and their cases were continued under bond. Afterwards, Taborsky was again questioned by Lieutenant Rome and then taken to the Hartford County jail under a mittimus from the New Britain court. Taborsky remained in jail until Thursday, February 28, when he was brought to state police headquarters in Hartford. There a bench warrant for appearance in the Superior Court was served upon him.

On Wednesday, February 27, in the afternoon, Sergeant Paige and Detective Robert Murphy of the state police questioned Culombe at police headquarters concerning the New Britain and other crimes. Culombe stated that the police
"were looking for four guns, two of which would be un-
67 der water, and were looking for two men and that he himself had not done any killing." Culombe then agreed to show the officers where the guns were. Lieutenant

Rome, Sergeant Paige, Detective Murphy and Detective Vincent O'Brien went with Culombe in a police car to Culombe's house. On the way, Culombe related the facts substantially as contained in his confession, outlined hereinbefore, except that he claimed that Taborsky, and not he, had shot Kurpiewski in the boiler room of the gasoline station. At Culombe's house, the officers removed the medicine cabinet from the wall in the toilet room and found, in a brief case between the walls, a gun and two blackjacks. They also found, in a safe, a metal box with some parts of a gun. At Culombe's direction, they recovered from a swamp at Dexter and Reed Avenues in Hartford a raincoat with human bloodstains on it. Culombe stated it belonged to him and was worn by Taborsky on the night they went to New Britain. While at his house, Culombe said to his wife that he had told a true story to the police and that he might get life but Taborsky would get the chair. The officers, at Culombe's suggestion, then went with Culombe to the intersection of Newfield and Dexter Avenues in Hartford. Pointing to a pond, he said that two guns could be found there and that the gun parts in the metal box would fit one of the guns. Culombe directed the officers to a service station, where he pointed out a 1949 black Oldsmobile which he said was previously owned by him and was used the night he and Taborsky went to New Britain. Later, at state police headquarters, Culombe admitted that he had participated in the New Britain crime. That evening he signed a written confession which described two holdups, including the one in New Britain. Later, he signed another statement
68 which described only the New Britain holdup. Culombe saw his wife at the house and at least twice at police headquarters after he was taken into custody and before his confession. He said nothing to her, however, about getting an attorney.

On Thursday morning, February 28, Culombe was served with a bench warrant charging him with murder. He was then presented in the Superior Court. The court informed him that the police wished to investigate further the charges against him and that he had the right to remain silent if he wished. Culombe said that he would co-operate with the police and, as

related hereinbefore, that he wanted counsel. The court informed him that he could have an attorney of his own choice at state expense. On the evening of March 2, while he was in a cell at state police headquarters, Culombe called the officer who was watching him and offered to give the police some further information concerning the New Britain affair. He then admitted that it was he who followed Kurpiewski into the service station, forced him at gun point into the boiler room and shot him. This admission was later incorporated into another written statement which Culombe signed. Although Culombe claimed that the police had used his wife and children to force a confession from him, the trial court found that Mrs. Culombe had come voluntarily to police headquarters with her children, whom she did not want to leave at home alone, that she was attended by a policewoman and was well treated, and that at no time was she used, or were the children used, to bring pressure on Culombe.

When Taborsky was presented in the Superior Court on Thursday, February 28, the presiding judge told him that he was releasing him in the custody of the state police for
69 the purpose of further investigation, that he need make no statement, and that any statement which he did make could be used against him. The following day, Friday, March 1, Taborsky's mother came to state police headquarters at her own request. She told Taborsky that she wanted him to tell the truth and that he should tell his part of the story, because Culombe had put the blame on him. Taborsky, then, in the presence of Lieutenant Rome and Officer Reimer, told his mother that at the Kurp gasoline station the other fellow killed the station attendant, that they both robbed him and that he, Taborsky, killed the customer and robbed him. Taborsky was questioned after his mother left. The questions and answers were taken in shorthand. A transcription of the notes was signed by Taborsky on March 3. When he was in the Police Court in New Britain on February 26 with his mother and sister, his mother had asked him if she should get a lawyer and he replied that he did not need a lawyer. Prior to his presentation in the Superior Court on February 28, Taborsky did not request

counsel. The court ruled that the confessions of both defendants were voluntary and admitted the confessions in evidence.

A confession is not admissible in evidence unless it is voluntary. State v. Castelli, 92 Conn. 58, 67, 101 A. 476; State v. Palko, 121 Conn. 669, 680, 186 A. 657; State v. Zukauskas, 132 Conn. 450, 459, 45 A. 2d 289; State v. Malm, 142 Conn. 113, 120, 111 A. 2d 685; State v. Rogers, 143 Conn. 167, 173, 120 A. 2d 409, cert. denied, 351 U.S. 952, 76 S. Ct. 850, 100 L. Ed. 1476; 2 Wharton, Criminal Evidence (12th Ed.) § 348. The issue is one of fact to be determined by the court in the exercise of a legal discretion, and its decision will not be disturbed unless that discretion has been abused. State
70 v. Lorain, 141 Conn. 694, 699, 109 A. 2d 504; State v. DiBattista, 110 Conn. 549, 562, 148 A. 664. The issue of admissibility is ordinarily resolved by the court after a preliminary hearing in the absence of the jury, the procedure followed in the instant cases. State v. Lorain, supra. The defendants claim that they were being illegally detained when the confessions were made. This cannot be true of Taborsky, because, before he confessed, he had been served with a bench warrant, had been presented in the Superior Court and warned of his rights, and had then been committed to the custody of the state police. Culombe, who confessed before his presentation in the Superior Court, was being held by the state police under § 6-49 of the General Statutes. That aside, there is nothing to indicate that either defendant at the time thought his detention to be illegal. Thus no irregularity in the detention, had there been any, could have induced, or contributed to the inducement of, the confession. State v. Zukauskas, supra, and authorities cited; State v. Buteau, 136 Conn. 113, 123, 68 A. 2d 681, cert. denied, 339 U.S. 903, 70 S. Ct. 516, 94 L. Ed. 1332; 20 Am. Jur. 431, § 498. An examination of the record does not disclose that the confessions were induced by anything which would make them involuntary and, therefore, inadmissible. The trial court did not abuse its discretion and properly admitted the confessions in evidence.

The defendants have assigned error in the denial of their motions to dismiss the indictments. They claim that the evidence was insufficient to satisfy the requirements of the so-

called two-witness rule. General Statutes § 54-83 provides that "[n]o person shall be convicted of any crime punishable by death without the testimony of at least two witnesses, 71 or that which is equivalent thereto." We have interpreted this statute to require "that the proof of all the essential elements of the capital crime charged (each of which must be proved beyond a reasonable doubt) shall not depend upon the testimony of one witness. If one or more witnesses testify to facts relevant and sufficient to prove some of the essential facts of the capital crime charged, and another witness or witnesses testify to facts relevant and sufficient to prove the remaining essential facts, the jury may find that the statute has been satisfied." State v. Schutte, 97 Conn. 462, 468, 117 A. 508; State v. Cots, 126 Conn. 48, 57, 9 A. 2d 138; State v. Malm, 142 Conn. 113, 118, 111 A. 2d 685.

There was ample evidence, independent of either confession, that the capital crimes charged had been committed, and also evidence to corroborate the essential facts stated in the confessions. A summary of the evidence includes the following: The defendants were together at Culombe's house on the afternoon of Saturday, December 15, 1956, the day the crimes were committed, and also in the evening of that day shortly after the bodies of the victims were found. That afternoon, the defendants had been seen bringing a television set into Culombe's house from his Oldsmobile. The set had been purchased by him on a deferred payment plan that afternoon in East Hartford. It was placed in the car with the help of the seller. Culombe paid for the set in full on the following Monday morning, December 17. The Oldsmobile was the car later identified by Culombe as the one in which he and Taborsky drove to, and returned from, New Britain on the evening of December 15. The sign on Kurp's gasoline station was as described by Taborsky in his confession. The body of 72 Janowski was found in the toilet room; there were two bullet wounds in his head. This corroborated Taborsky's description of the shooting. The body of Kurpiewski was found in the boiler room with one bullet wound in his head. The statements of both Taborsky and Culombe included these details of the crime. Janowski's car was found at the pumps

in front of the station, facing south. Taborsky's statement put the car in that position. In this car was Janowski's little daughter. This fact corroborated statements made by both Taborsky and Culombe as to the presence of a child in the car. Taborsky stated that Kurpiewski was wearing a cap with a black visor. There was independent testimony that Kurpiewski had been wearing such a cap, and one was found with Kurpiewski's body in the boiler room. Both defendants said, when they were taken to the gasoline station after their confessions, that the location of the desk and the cash register had been changed. Other evidence confirmed it. Two guns were retrieved from the pond where Culombe said he had disposed of the guns used in the shootings, Taborsky having directed him to do so. One of the guns was identified by evidence independent of the confessions as the one from which certain parts found in Culombe's house had been removed. The other was identified by Taborsky as the gun he used to shoot Janowski. A raincoat with human bloodstains on it was found in a swamp where Culombe said he had thrown it. Most of the details contained in the confessions were established by independent evidence more than sufficient to satisfy the two-witness rule.

Taborsky assigns error in the refusal of the trial court to charge as he requested on the application of the two-witness rule and in the charge as given. The court charged the
73 jury in accordance with the law stated in the cases heretofore cited. This claim of error is without merit.

Upon error alleged in the denial of their motions to set aside the verdicts, the defendants claim that the court applied an erroneous rule pertaining to the standard of sanity or mental capacity of the defendants to commit the crimes with which they were charged. They urged the rule stated in Durham v. United States, 214 F. 2d 862, 874; see State v. Pike, 49 N.H. 399. The court correctly charged the jury according to the rule stated in State v. Davis, 146 Conn. 137, 143, 148 A. 2d 251 cert. denied, 360 U.S. 921, 79 S. Ct. 1441, 3 L. Ed. 2d 1537, and State v. Donahue, 141 Conn. 656, 664, 109 A. 2d 364, cert. denied, 349 U.S. 926, 75 S. Ct. 775, 99 L. Ed. 1257. In the Davies case, we reviewed and reconsidered our rule and re-

jected the Durham rule. The cases at bar furnish no reason for further consideration of our rule. The defendants, at the expense of the state, obtained experts of their own choice to testify on their mental capacity. The state also offered expert testimony on this subject. The jury could properly find that the defendants had the mental capacity required by the rule stated in the charge to make them criminally responsible for their acts.

On the claim that the evidence failed to establish the guilt of the defendants beyond a reasonable doubt, no further extended discussion of the testimony and the exhibits is required. The jury had before them the confessions and the testimony concerning the circumstances under which they were given, substantially as hereinbefore detailed in our discussion of the issue of their admissibility. There was ample evidence, independent of the confessions, not only to corroborate the facts stated in them but to supply additional facts pointing to the de-
74 fendants' guilt. Neither of the defendants took the stand to deny his guilt or to show that the proof offered by the state as to the crimes was not true. This was the right of each defendant and did not relieve the state from establishing guilt beyond a reasonable doubt. State v. McDonough, 129 Conn. 483, 487, 29 A. 2d 582. A review of all the evidence establishes that the jury could find the guilt of the accused beyond a reasonable doubt as that term is defined in our cases. State v. Smith, 138 Conn. 196, 200, 82 A. 2d 816, and cases cited.

Both the defendants assign error in the refusal of the court, upon their motions, to excuse George W. Hannon of East Hartford from sitting on the jury. After the examination of Hannon by the court and by counsel on the voir dire, he was accepted by all as a juror. Before the entire jury had been selected, and before the defendants had exhausted the challenges allowed them (General Statutes § 51-242), the defendants moved that Hannon be excused by the court because he had, as a member of the board of finance of East Hartford, participated in the adoption of a resolution offering a reward for the arrest of the perpetrators of a holdup and killing in that town. It developed later that the defendants were implicated in this crime. The examination of Hannon clearly indicated

a lack of any prejudice. The most that can be claimed from the fact that he had participated in the adoption of the resolution offering the reward was, not that he was prejudiced personally against the defendants, but that he wanted the perpetrators of the crime apprehended and brought to justice. This is no more than any decent citizen would want. There was no abuse of discretion in the action which the court took in denying the motions to excuse Hannon as a
75 juror. State v. Potter, 18 Conn. 166, 175; DeCarlo v. Frame, 134 Conn. 530, 533, 58 A. 2d 846. Taborsky complains because veniremen were not excused by the court when they admitted what his brief describes as "a preconceived notion of guilt" of the defendants. It is true that some of the veniremen stated on their examination on the voir dire that they had read accounts in newspapers and had heard and seen radio and television broadcasts which led them to an opinion of the guilt of the accused. They all stated under oath, however, that they could and would disregard any opinion they might hold and would decide the cases only on the evidence presented in court and under the court's charge. The examinations of these veniremen disclosed that their opinions or suppositions did not, in fact, incapacitate them from sitting as impartial jurors, and the court's ruling cannot be disturbed. State v. Wilson, 38 Conn. 126, 138; State v. Willis, 71 Conn. 293, 315, 41 A. 820; State v. Klein, 97 Conn. 321, 325, 116 A. 596.

Culombe claims error in a charge by the court to the effect that the jury, in weighing the opinions of the expert witnesses, were to take into consideration the fact that those opinions might be based wholly or in part upon statements made to the experts by the defendants, who, being on trial for their lives, were not disinterested witnesses and were not, when they made the statements, under oath. A similar charge was made in State v. Saxon, 87 Conn. 5, 20, 86 A. 590. In that case, the statements which furnished some basis for the experts' opinions were in evidence from the lips of the accused. In the present instance, some of the statements upon which the experts testifying in behalf of Culombe could have relied were in evi-
76 dence from the testimony of the experts themselves as

to the history given to them by Culombe, and some from the lips of Culombe as a witness. No exception was taken to the charge, nor is there any reference made to it in the finding. Practice Book §§ 153, 398 and Form No. 559(B). Nevertheless, we have considered it. The charge as given applied to the expert testimony on behalf of the state as well as on behalf of Culombe and was correct under the circumstances. See State v. Kenyon, 134 Conn. 43, 49, 54 A. 2d 585.

Culombe also complains of the admission in evidence of a portion of a photograph taken of Kurpiewski as he lay dead on a stretcher. Culombe claims that the exhibit was so gruesome as to arouse the prejudice of the jury. The exhibit depicted facts material to the state's case, and the trial court did not abuse its discretion in admitting it. Thibodeau v. Connecticut Co., 139 Conn. 9, 14, 89 A. 2d 223, and cases cited; State v. Smith, 27 N.J. 433, 448, 142 A. 2d 890.

There is no error in either case.

In this opinion the other judges concurred.

[Clerk's certificate to foregoing paper omitted in printing.]

77 In the Supreme Court of Errors in the State of Connecticut

No. 4717

STATE OF CONNECTICUT

v.

ARTHUR CULOMBE, OF THE TOWN AND COUNTY OF HARTFORD, STATE OF CONNECTICUT

ON APPEAL FROM SUPERIOR COURT, HARTFORD COUNTY

Judgment

February 16, 1960

This appeal by the defendant from the judgment of said Superior Court was allowed by said Court on the third day of July, 1957.

On the 27th day of September, 1958, the appellant filed his assignments of error claiming error in the record, judgment, proceedings and decisions of said Court on questions of law

arising in the trial as may appear in the certified transcript of record on file in this Court, and said appeal came to this Court at its term holden on the first Tuesday of October, 1958, when the parties appeared and thence by continuance to the present term.

This Court, having heard the parties, finds that in the record, judgment, proceedings and decisions of said Court there is no error. Judgment entered February 16, 1960.

By the Court:

RAYMOND G. CALNEN,
Clerk.

[Clerk's certificate to foregoing paper omitted in printing.]

78 Supreme Court of the United States

No. 1005 Misc., October Term, 1959

ARTHUR CULOMBE, PETITIONER

v.

CONNECTICUT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari

June 20, 1960

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1021.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 20, 1960.

U. S. GOVERNMENT PRINTING OFFICE: 1960